NAVAL WAR COLLEGE

INTERNATIONAL LAW SITUATIONS

WITH

SOLUTIONS AND NOTES

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PREFACE

The discussions upon international law were, as in recent years, conducted under the auspices of the Naval War College authorities by George Grafton Wilson, LL. D., professor of international law in Harvard University, who also drew up the notes which are published in the present volume. The discussion aimed to consider the situations from the point of view of the belligerent on the offensive, the belligerent on the defensive, and the neutral.

Criticisms of the material presented and suggestions as to topics and situations that should be discussed will be welcomed by the Naval War College.

J. R. Poinsett Pringle,
Rear Admiral, United States Navy,
President Naval War College.

June 5, 1928.

CONTENTS

International Law Situations

WITH SOLUTIONS AND NOTES

Situation I

GOODS ON NEUTRAL MERCHANT VESSEL

States X and Y are at war. Other states are neutral. A cruiser of X meets a private merchant vessel flying the flag of state Z. The papers of the vessel show that port O in state Y is the last port of call for the merchant vessel. The vessel has the following cargo: One-sixth raw molasses and one-sixth petroleum, consigned to port P in state N; one-eighth iron ore and one-eighth fancy goods, consigned to port Q in state R; one-eighth fancy shoes for ladies, one-eighth golf suits for men, one-sixth valuable art-rug specimens for national museum, consigned to port O.

The master of the merchant vessel of state Z maintains that his vessel and cargo are not liable to seizure because of ratio and list of goods, consignment to neutral ports, geographical location of ports with reference to belligerents, and because the papers on board include a certificate of innocent character of goods from authorities of Z as well as a letter of assurance from the consul of Y at the port of departure.

Are these grounds sufficient to exempt the merchant vessel from liability to seizure?

SOLUTION

The contentions of the master are not grounds sufficient to exempt the merchant vessel from liability to seizure.

NOTES

General.—While the subject of contraband has often been discussed at this Naval War College, it will be con-

venient to have a brief statement in regard to the development of the principle in connection with this situation. Details as to other aspects of contraband may be found by reference to the General Index, International Law Publications, Naval War College, 1901–1920.

Definition.—Contraband implies the existence of the idea of neutrality. The development of the idea of neutrality is comparatively recent. Grotius gave only scant reference to the subject and his great work first issued in 1625 was entitled "Law of War and Peace."

While not using the term "contraband," Grotius in 1625 gave a classification of articles of commerce which has served as a basis for the generally recognized distinctions. He enumerates:

1. Those things which have their sole use in war, such as arms.
2. Those things which have no use in war, as articles of luxury.
3. Those things which have use both in war and out of war, as money, provisions, ships, and those things pertaining to ships. (De Juri Belli ac Pacis, III, I, 5.)

Grotius further says, in regard to the conditions under which articles of the third class may come:

In the third class, objects of ambiguous use, the state of war is to be considered. For if I cannot defend myself except by intercepting what is sent, necessity, as elsewhere explained, gives us a right to intercept it, but under the obligation of restitution, except there be cause to the contrary. If the supplies sent impede the exaction of my rights, and if he who sends them may know this—as if I were besieging a town or blockading a port, and if surrender or peace were expected, he will be bound to me for damages; as a person would who liberates my debtor from prison, or assists his flight to my injury; and to the extent of the damage his property may be taken, and ownership thereof be assumed for the sake of recovering my debt. If he have not yet caused damage, but have tried to cause it, I shall have a right by the retention of his property to compel him to give security for the future by hostages, pledges, or in some other way. But if, besides, the injustice of my enemy to me be very evident, and he confirms him in a most unjust war, he will then be bound to me not only civilly, for the damage, but also criminally, as being one who protects a manifest criminal from the judge who is about to inflict punishment, and on that

ground it will be lawful to take such measures against him as are suitable to the offense, according to the principles laid down in speaking of punishment; and therefore to that extent he may be subjected to spoliation. (Whewell's translation, Grotius, De Jure Belli ac Pacis, III, I, 5.)

The positions here taken by Grotius in regard to what is now termed "conditional contraband" would not now be sustained even though his classification of contraband should be generally approved.

Early practice.—The classification made by Grotius was in no way his invention, for distinctions had been made much earlier than 1625, and Grotius stated the practice which had grown up among nations. A treaty of Great Britain and Holland (1625) uses the word "contraband." A British proclamation of 1625 mentions that commerce with the enemy in the following articles is prohibited—

any manner of graine, or victualls, or any manner of provisions to serve to build, furnish, or arme any shipps of warr, or any kind of munition for warr, or materials for the same, being not of the nature of mere merchandize.

A British proclamation made a few months later is detailed. In this "His Majestie" denounces as prohibited articles—

ordinance, armes of all sortes, powder, shott, match, brimstone, copper, iron, cordage of all kinds, hempe, saile, canvas, danuce pouldavis, cables, anchors, mastes, rafters, boate ores, balcks, capraves, deale board, clap board, pipe staves, and vessels and vessel staffe, pitch, tarr, rosen, okam, corne, graine, and victualls of all sorts, all provisions of shipping, and all munition of warr, or of provisions for the same, according to former declarations and acts of state, made in this behalf in the tyme of Queen Elizabeth, of famous memorie.

The practice before the days of Grotius had recognized goods as liable to penalty, such as arms, and as free from penalty, such as articles of luxury. Grotius endeavors to make clear that a third class should be recognized, a class of use both for peaceful and for warlike purposes.

Later attitudes.—As maritime commerce developed and as international trade became more and more important the demand for clear definitions of contraband became more imperative. From 1780, the time of the armed neutrality, neutrals were more positive in their assertion of their claim that property under neutral flags should be respected, and the definition of contraband became clearer. Even before this date the doctrine "free ships, free goods" had received strong support and had been embodied in treaties, but attempts to relieve commerce from interference became more frequent when steam and other forces removed the barriers of space.

This is evident in the case of the controversy in regard to coal, which became important during the Crimean War (1854–1856) through the introduction of steam power in vessels of war. The Declaration of Paris mentions but does not define contraband. Great Britain maintained that coal was an article *ancipitis usus* and conditional contraband. Though Secretary Cass in 1859 regarded the inclusion of coal as contraband as having "no just claim for support in the law of nations," in the Civil War, however, the Government of the United States considered coal as conditional contraband. Germany in 1870 maintained that the export of coal from Great Britain to France should be prohibited, and France reasserted her declaration of 1859 that coal under no circumstances should be considered contraband.

Hall said regarding coal as conditional contraband:

> The view taken by England is unquestionably that which is most appropriate to the uses of the commodity with which it deals. Coal is employed so largely, and for so great a number of innocent purposes, the whole daily life of many nations is so dependent on it by its use for making gas, for driving locomotives, and for the conduct of the most ordinary industries, that no sufficient presumption of an intended warlike use is afforded by the simple fact of its destination to a belligerent port. But on the other hand, it is in the highest degree noxious when employed for certain purposes; and when its destination to such purposes can be shown to be extremely probable, as by its con-

signment to a port of naval equipment, or to a naval station, such as Bermuda, or to a place used as a port of call, or as a base of naval operations, it is difficult to see any reason for sparing it which would not apply to gunpowder. One article is as essential a condition of naval offense as is the other. (Hall's Int. Law, 8th ed., p. 786.)

Different classifications.—The classification of articles carried to a belligerent would if determined by the enemy generally be strict; if determined by a neutral liberal. Both would admit that articles solely of use for purposes of war should be contraband and usually that articles which could not be of use in war should be free. Many states, particularly in continental Europe, would make no further classification than to say all articles which may be used in war are contraband and others are free.

These differences shown by various states have usually been due to the benefits or injury which might accrue to the respective countries. The same state has at different times maintained inconsistent positions. Russia in 1884 declared she would never recognize coal as contraband, but it was included in the absolute contraband list in the Russo-Japanese War in 1904–5.

Against this inclusion Great Britain protested vigorously. In 1915 Great Britain and Russia issued identical lists of contraband including fuel in conditional contraband.

There seemed to have been growing up during the latter half of the nineteenth century a considerable support for the idea of contraband by nature and contraband by destination.

The essential elements of contraband of war were well stated by Historicus:

In order to constitute contraband of war, it is absolutely essential that two elements should concur—viz. a hostile quality and a hostile destination. If either of these elements is wanting, there can be no such thing as contraband. Innocent goods going to a belligerent port are not contraband. Here there is a hostile destination, but no hostile quality. Hostile goods, such as munitions of war, going to a neutral port are not contraband. Here

there is a hostile quality, but no hostile destination. (Historicus on International Law, p. 191.)

The United States, Great Britain, and Japan have usually divided the articles which might be used in war into those solely for such use and those which might be used for war purposes or for peace purposes, such as foodstuffs. The great difficulty was the assignment of certain articles to the proper category. Chief Justice Chase in the case of the *Peterhoff* in 1866 stated a simple fact when he said:

> The classification of goods as contraband or not contraband has much perplexed text writers and jurists. A strictly accurate and satisfactory classification is perhaps impracticable. (5 Wallace, p. 28.)

Mr. Balfour said in 1904:

> I could not give a list of things which are or are not contraband of war, nor could any international lawyer fulfill any such demand.

There had been many attempts to determine the list of contraband by treaty agreements between two or more states. A treaty between the United States and Prussia of 1799, revised in 1828, provides in Article XIII that:

> All cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, muskets, flints, matches, powder, saltpeter, sulphur, cuirasses, pikes, swords, belts, cartouch boxes, saddles, and bridles, beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel or passenger ought to have, and in general whatever is comprised under the denomination of arms and military stores, of what description so ever, shall be deemed objects of contraband. (VIII U. S. Stat. p. 162.)

During the Russo-Japanese War of 1904–5 there were many diplomatic controversies in regard to the contraband list. In these controversies the United States and Great Britain took important parts. Russia was brought to admit the principle of conditional contraband as applying to certain articles. The British ambassador wrote to the Russian foreign office on October 9, 1904:

> The principle of conditional contraband has already been recognized by the Russian Government, and it only remains to

extend its application to coal, cotton, and other articles which may be used for peaceful or warlike purposes according to circumstances. Such a measure would be consistent with the law and practice of nations and with the well-established rights of neutrals. While maintaining the rights of a belligerent, the rights of neutrals would be respected, and the source of a serious and unprofitable controversy would be removed. (Parliamentary Papers, Russia, No. 1 [1905], p. 24.)

The American position early in the nineteenth century regarding coal as conditional contraband only is well stated in the note of Mr. Choate to Lord Lansdowne of June 24, 1904:

MY LORD: Referring to our recent interviews, in which you expressed a desire to know the views of my Government as to the order issued by the Russian Government on the 28th of February last, making "every kind of fuel, such as coal, naptha, alcohol, and other similar materials, unconditionally contraband," I am now able to state them as follows:

These articles enter into great consumption in the arts of peace, to which they are vitally necessary. They are usually treated not as "absolutely contraband of war," like articles that are intended primarily for military purposes in time of war, such as ordnance, arms, ammunition, etc., but rather as "conditionally contraband"; that is to say, articles that may be used for or converted to the purposes of war or peace, according to circumstances. They may rather be classed with provisions and foodstuffs of ordinary innocent use, but which may become absolutely contraband of war when actually and especially destined for the military and naval forces of the enemy. * * * The recognition in principle of the treatment of coal and other fuel and raw cotton as absolutely contraband of war might ultimately lead to a total inhibition of the sale by neutrals to the people of belligerent states of all articles which could be finally converted to military uses. Such an extension of the principle, by treating coal and all other fuel and raw cotton as absolutely contraband of war, simply because they are shipped by a neutral to a non-blockaded port of a belligerent, would not appear to be in accord with reasonable and lawful rights of a neutral commerce. (1904, Foreign Relations, U. S., p. 334.)

International consideration.—Three years later, at the Second Hague Conference, the British representative proposed the entire abolition of contraband, but no agree-

ment could be reached by the 44 States attending, though a tentative list of absolute contraband received general approval but was not formally adopted.

It remained for the International Naval Conference at London in 1908–9 attended by representatives of the 10 naval powers, to agree upon contraband lists which were then regarded as generally satisfactory. This conference in the Declaration of London, signed February 26, 1909, fixed upon a list of absolute contraband, a list of conditional contraband, and an absolutely free list. Article 22 of the Declaration of London, the list approved at The Hague in 1907, includes as absolute contraband 11 categories, all of which are primarily of use for war except beasts of burden. Article 24 contains 14 categories of conditional contraband, food and fuel being the most important. Article 28 contains 17 categories of articles not to be declared contraband. Among the most important of these are raw cotton, wool and other textiles, rubber, metallic ores. The Declaration of London was not ratified and its provisions as to contraband were not adopted in the World War.

Destination.—When in early days goods were either absolutely contraband or else free, all contraband goods bound direct for a belligerent country were liable to capture and other goods were free. The destination was usually easily determined and the liability was correspondingly clear. With the introduction of the conditional contraband list the matter of destination became much more important, for these articles, such as food and fuel, in 1909 were liable to capture not when bound to the belligerent country, but only when bound for the military forces, or for places which were clearly serving to support the military forces. In general, goods whatever their nature were exempt from capture if having a neutral destination. Goods of noncontraband nature were exempt whatever their destination. Goods of the nature of conditional contraband were liable to capture if destined to a military port or to military forces, but

otherwise exempt. Goods of a warlike nature were liable to capture if bound for the enemy's country.

War and commerce.—The fundamental principle was that the fact of existence of war between states did not create a condition of belligerency for outside parties. The fact that France and Germany were at war did not create a hostile relation between Italy and either of the belligerents. The relations of Italy remained as before and Italy would be on terms of friendship with both belligerents. The Italian commerce should be free as in time of peace except for restraints necessary for legitimate operations of war. The belligerents should be permitted to carry on the hostilities without interference except for such restraints as would be necessary in order that the legitimate commerce of neutrals might be maintained.

Since the state of war is admitted as legitimate, the exercise of belligerent rights is legitimate. The exercise of these rights implies the right to perform such acts as are necessary to reduce the enemy to submission, provided these acts do not impair generally accepted neutral rights. Here is always the point of conflict. What is legitimate for the neutral and what is legitimate for the belligerent?

The risk which the belligerent runs is that the contraband may be used against him. The risk which the owner of contraband runs is loss through capture. The risk which the carrier runs is loss of freight, of delay for purpose of bringing in the contraband for adjudication, and if vessel and contraband have the same owner the risk that both may be condemned. Liability begins only with knowledge.

George V of Hanover in the middle of the nineteenth century seemed to wish to extend the penalty for carrying contraband and provided by law for a $500 fine or six months' imprisonment. This penalty was to be ap-

plied also to the carrying of troops, dispatches, or couriers.

Neutrality and equalization.—It has often been maintained that neutrality implied merely impartiality. It has also been maintained that it involved equal rights and privileges for both belligerents. In a note of June 29, 1915, from the Austro-Hungarian Ministry of Foreign Affairs to the United States, it was intimated that the Government of the United States should take measures to equalize commercial relations between the United States and both belligerent parties. To this the United States replied on August 12, 1915:

> The Government of the United States has given careful consideration to the statement of the Imperial and Royal Government in regard to the exportation of arms and ammunition from the United States to the countries at war with Austria-Hungary and Germany. The Government of the United States notes with satisfaction the recognition by the Imperial and Royal Government of the undoubted fact that its attitude with regard to the exportation of arms and ammunition from the United States is prompted by its intention to "maintain the strictest neutrality and to conform to the letter of the provisions of international treaties," but is surprised to find the Imperial and Royal Government implying that the observance of the strict principles of the law under the conditions which have developed in the present war is insufficient, and asserting that this Government should go beyond the long recognized rules governing such traffic by neutrals and adopt measures to "maintain an attitude of strict parity with respect to both belligerent parties."
>
> To this assertion of an obligation to change or modify the rules of international usage on account of special conditions the Government of the United States can not accede. The recognition of an obligation of this sort, unknown to the international practice of the past, would impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy. The contention of the Imperial and Royal Government appears to be that the advantages gained to a belligerent by its superiority on the sea should be equalized by the neutral powers by the establishment of a system of nonintercourse with the victor. The Imperial and Royal Government confines its comments to arms and am-

munition, but if the principle for which it contends is sound, it should apply with equal force to all articles of contraband. A belligerent controlling the high seas might possess an ample supply of arms and ammunition, but be in want of food and clothing. On the novel principle that equalization is a neutral duty, neutral nations would be obligated to place an embargo on such articles because one of the belligerents could not obtain them through commercial intercourse.

But if this principle, so strongly urged by the Imperial and Royal Government, should be admitted to obtain by reason of the superiority of a belligerent at sea, ought it not to operate equally as to a belligerent superior on land? Applying this theory of equalization, a belligerent who lacks the necessary munitions to contend successfully on land ought to be permitted to purchase them from neutrals, while a belligerent with an abundance of war stores or with the power to produce them should be debarred from such traffic.

Manifestly the idea of strict neutrality now advanced by the Imperial and Royal Government would involve a neutral nation in a mass of perplexities which would obscure the whole field of international obligation, produce economic confusion, and deprive all commerce and industry of legitimate fields of enterprise, already heavily burdened by the unavoidable restrictions of war. (Spec. Sup. Amer. Jour. Int. Law, vol. 9, July, 1915, p. 166.)

Liability for contraband.—This liability is always conditioned by the destination of the goods. Sir William Scott, the English judge, in pronouncing in 1799 on a cargo of cheese on board the *Jonge Margaretha* bound from Amsterdam to Brest, gives a statement which is almost modern:

But the most important distinction is whether the articles were intended for the ordinary uses of life, or even for mercantile ships' use, or whether they were going with a highly probable destination to military use? Of the matter of fact on which the distinction is to be applied, the nature and quality of the port to which the articles were going is not an irrational test. If the port is a general commercial port, it shall be understood that the articles were going for civil use, although occasionally a frigate or other ships of war may be constructed in that port. On the contrary, if the great predominant character of a port be that of a port of naval military equipment, it shall be intended that the articles were going for military use, although merchant ships resort to the same place; and although it is possible that

the articles might have been applied to civil consumption—for it being impossible to ascertain the final application of an article *ancipitis usus*—it is not an injurious rule which deduces both ways in the final use from the immediate destination, and the presumption of a hostile use founded on its destination to a military port is very much inflamed if at the time when the articles were going a considerable armament was notoriously preparing to which a supply of these articles would be eminently useful. * * * I think myself warranted to pronounce these cheeses to be contraband. (1 C. Rob., p. 188, 189.)

Delivery of goods.—There are in many treaties clauses permitting the master of a merchant vessel to deliver to a belligerent articles of contraband and then to proceed. One of the earliest of these was in 1667 between Great Britain and the United Netherlands. The United States made such a treaty with Sweden as early as 1783 which is still in force. The clause relating to the delivery of contraband in the Prussian treaty, 1799, was important in the World War and involved in the negotiations with Germany in regard to the American vessel, the *William P. Frye*, which was sunk by the German cruiser *Prinz Eitel Friedrich* on the high seas on January 28, 1915. This clause is in part as follows:

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors, and it shall further be allowed to use in the service of the captors, the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the

goods supposed to be of contraband nature he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage. (8 U. S. Stats. 162, 168; also U. S. Treaties and Conventions, 1776–1909, vol. 2, p. 1729.)

Doubtful destination.—Destination is not always easy to prove, but in case of reasonable doubt the belligerent is justified in bringing in a vessel supposed to be engaged in carriage of contraband. This doubt may be due to irregularity of the vessel's papers or to other reasons. The commander of the belligerent ship can not act in a judicial capacity and in case of doubt should send a vessel to the prize court.

As conditional contraband was liable to capture only when bound for the military forces or use, it is not always easy to determine the course of action to be taken by a belligerent commander. The Declaration of London of 1909 endeavored to render such destination more clear and provided in article 34 that:

> There is presumption of the destination referred to in Article 33 if the consignment is addressed to enemy authorities, or to a merchant, established in the enemy country, and when it is well known that this merchant supplies articles and material of this kind to the enemy. The presumption is the same if the consignment is destined to a fortified place of the enemy, or to another place serving as a base for the armed forces of the enemy; this presumption, however, does not apply to the merchant vessel herself bound for one of these places and of which vessel it is sought to show the contraband character. (1909, N. W. C. Int. Law, Topics, p. 83.)

According to article 35 the ship's papers were to be "conclusive proof of the voyage of the vessel as also of the port of discharge of the goods." Great Britain, France, and Russia in 1914 greatly extended the liability by pronouncing liable to capture goods of the nature of conditional contraband bound for a neutral port if consigned "to order," to a consignee in enemy's territory, or if it is not clear to whom the consignment is made. The burden of proof of innocent character of the cargo

is placed upon the owners of such goods, and if an enemy is drawing supplies for its forces from a neutral country even more stringent rules may be applied.

Contraband lists.—It was thought in 1909 that a list of contraband and regulations for its capture which would be satisfactory for many years had been drawn, but in 1914 the greater maritime powers showed a disposition to depart from its provisions and arbitrarily to establish lists which should be for their presumed and temporary advantage. Clearly it would have been better for the world and probably for the belligerents themselves to abide by some general agreement which had been drawn by representatives of the great maritime powers in a time of peace. Controversies raged in regard to the treatment of cotton, food, and other articles. Neutral states were irritated by restraints on trade. It is evident that an equable adjustment of belligerent and neutral rights would have been far better even in time of hostilities and that to maintain the principles of justice is not merely expedient but an evidence of farseeing statesmanship.

British and continental views.—The British Royal Commission of Supply of Food and Raw Material in Time of War in 1905 says in regard to the difference between the British and continental points of view in regard to contraband that:

> All discussions as to the nature of the goods which may be treated as contraband start with the threefold distinction between things which are useful only in war, things which are useless for war, and things which are useful both in war and in peace. As to articles of the first class, there is practically no difference of opinion. Cannon, bayonets, uniforms and ammunition, for instance, are admitted on all hands to be contraband of war; the sole question being whether only finished articles are of this character, or whether the character is shared also by their component parts, and by machinery for putting them together. Articles of the second class, e. g., a piano or a portrait by Gainsborough, are as obviously "innocent." It is as to the third class of articles, *res ancipitis usus*, that controversies have arisen;

and here two opposing schools of opinion have to be reckoned with. According to what may be called the "Continental school," the term "contraband" covers only articles the use of which is exclusively warlike; while according to what may be called the "British school," which is also that of the United States, the list of contraband is an elastic one, comprising not only such "absolutely" contraband articles as would be included in the first category mentioned above, but also articles which are "conditionally" or "relatively" contraband with reference to the special character of the war. It would appear, however, that the opposition between the Continental and British views is not unlikely to end in a reasonable compromise. Already Continental lists tend to include the materials out of which, and the machinery by means of which, arms and ammunition are manufactured; while the "conditional" contraband of the British school is admittedly restricted to articles indicated as noxious by special circumstances, and it is subjected only to the mitigated penalty of pre-exemption instead of to confiscation. (Vol. I, p. 23, sec. 96.)

Ratio.—With reference to the ratio of contraband in a vessel's cargo, the question is usually as to its effect upon the liability of the vessel. There have been differing doctrines as to the proportion of contraband that would make the vessel liable to confiscation. The Declaration of London reached an agreement which seemed generally acceptable, in 1909.

ARTICLE 40

The confiscation of the vessel carrying contraband is allowed if the contraband forms, either by value, by weight, by volume or by freight, more than half the cargo.

It was universally admitted, however, that in certain cases the condemnation of the contraband does not suffice, and that condemnation should extend to the vessel herself, but opinions differed as to the determination of these cases. It was decided to fix upon a certain proportion between the contraband and the total cargo.

But the question divides itself: (1) What shall be the proportion? The solution adopted is the mean between those proposed, which ranged from a quarter to three quarters. (2) How shall this proportion be reckoned? Must the contraband form more than half the cargo in volume, weight, value, or freight? The adoption of a single fixed standard gives rise to

theoretical objections, and also encourages practices intended to avoid condemnation of the vessel in spite of the importance of the cargo. If the standard of volume or weight is adopted, the master will ship innocent goods sufficiently bulky, or weighty in order that the volume or weight of the contraband may be less. A similar remark may be made as regards the value or the freight. The consequence is that it suffices, in order to justify condemnation, that the contraband should form more than half the cargo according to any one of the points of view mentioned. This may seem severe; but, on the one hand, proceeding in any other manner would make fraudulent calculations easy, and, on the other, it may be said that the condemnation of the vessel is justified when the carriage of contraband formed an important part of her venture, which is true in each of the cases specified. (General Report, 1909, Naval War College, p. 89.)

This point of view was upheld by belligerents generally in the World War as equable. It was affirmed that ignorance could not be rationally affirmed if more than half the cargo was contraband.

In the case of the *Hakan*, there was raised in the British prize court several questions. These were:

First, apart from any Resolutions or Articles of the London Conference, what was the rule of the law of nations affecting a vessel which in the circumstances of this case was carrying a cargo consisting wholly of contraband destined for the enemy? *Secondly*, was the Order in Council adopting Art. 40 of the Declaration of London so contrary to such a rule that the Order was invalid; or was it sufficiently consistent with such a rule, or did it so mitigate the rule in favour of the enemy, that it acquired validity, in accordance with the doctrine stated by the Privy Council in the *Zamora?* Or, *thirdly*, did the acts of the representatives of the various Powers at the Conference, and the subsequent action and practice of their States, bring into existence, by a sufficiently general consensus of view and assent, a new or modified rule of the law of nations upon the subject, to which effect ought to be given in their Prize Courts at the present day, apart from any Order in Council?

As to the first, having regard to the decrees and practices of the nations for the last 100 years, I should feel bound to declare that the rule which prevailed before the relaxation introduced a century or more ago should be regarded as valid at the present day. This means that the so-called well-established rule in favour of a contraband-laden ship contended for by the claimants does not exist. In the days of the relaxation referred to, the ship

was subject to confiscation in many respects, which were sometimes called exceptions. It has always been held that if any part of the contraband carried belonged to the owner of the ship, the ship itself was subject to the penalty of confiscation, as was the contraband. According to our most recent writers, the vessel suffered if her owner was privy to the carriage of the contraband goods, whether they belonged to him or not (see Westlake, p. 291; Hall, p. 666). In the present day, even more than in the past, the owner must be taken to know either directly or through the master how this vessel is laden, or to what use she is put. * * *

Secondly, it follows, from what I have stated, that the provisions of Art. 40 were a limitation or m tigation of some of the rights of the Crown; and the result of the decision in the *Zamora* is that accordingly the provisions in the Order in Council are valid.

Thirdly, although there is no formal instrument binding as an international convention, I think that the attitude and action of the most important maritime States before and since 1908 have been such as to justify the Court in accepting as forming part of the law of nations at the present day a rule that neutral vessels carrying contraband which by value, we ght, volume or freight value, forms more than half the cargo, are subject to confiscation, and to condemnat.on as good and lawful prizes of war. ([1916] P. 226.)

On appeal to the judicial committee of the privy council, it was said in 1917:

Their Lordships consider that in this state of the authorities they ought to hold that knowledge of the character of the goods on the part of the owner of the ship is sufficient to justify the condemnation of the ship, at any rate where the goods in question constitute a substantial part of the whole cargo. ([1918] A. C. 148.)

Department of State, 1915.—Early in 1915 Senator Stone, of the Senate Committee on Foreign Relations, summarized complaints and charges which had come to him on the observance of neutrality by the United States. These he submitted to the Secretary of State under 20 heads. The replies to some of these show the attitude of the Department of State at the time:

(4) *Submission without protest to British violations of the rules regarding absolute and conditional contraband as laid down*

in The Hague conventions, the Declaration of London, and international law.

There is no Hague convention which deals with absolute or conditional contraband, and, as the declaration of London is not in force, the rules of international law only apply. As to the articles to be regarded as contraband, there is no general agreement between nations. It is the practice for a country, either in time of peace or after the outbreak of war, to declare the articles which it will consider as absolute or conditional contraband. It is true that a neutral Government is seriously affected by this declaration as the rights of its subjects or citizens may be impaired. But the rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade and there is no tribunal to which questions of difference may be readily submitted.

The record of the United States in the past is not free from criticism. When neutral this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case.

The United States has made earnest representations to Great Britain in regard to the seizure and detention by the British authorities of all American ships or cargoes bona fide destined to neutral ports, on the ground that such seizures and detentions were contrary to the existing rules of international law. It will be recalled, however, that American courts have established various rules bearing on these matters. The rule of "continuous voyage" has been not only asserted by American tribunals but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port "to order," from which, as a matter of fact, cargoes had been transshipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government therefore can not consistently protest against the application of rules which it has followed in the past, unless they have not been practiced as heretofore.

(5) *Acquiescence without protest to the inclusion of copper and other articles in the British lists of absolute contraband.*

The United States has now under consideration the question of the right of a belligerent to include "copper unwrought" in

its list of absolute contraband instead of in its list of conditional contraband. As the Government of the United States has in the past placed "all articles from which ammunition is manufactured" in its contraband list, and has declared copper to be among such materials, it necessarily finds some embarrassment in dealing with the subject.

Moreover, there is no instance of the United States acquiescing in Great Britain's seizure of copper shipments. In every case, in which it has been done, vigorous representations have been made to the British Government, and the representatives of the United States have pressed for the release of the shipments.

(6) *Submission without protest to interference with American trade to neutral countries in conditional and absolute contraband.*

The fact that the commerce of the United States is interrupted by Great Britain is consequent upon the superiority of her navy on the high seas. History shows that whenever a country has possessed that superiority our trade has been interrupted and that few articles essential to the prosecution of the war have been allowed to reach its enemy from this country. The department's recent note to the British Government, which has been made public, in regard to detentions and seizures of American vessels and cargoes, is a complete answer to this complaint.

* * * * * *

(8) *Submission to British interference with trade in petroleum, rubber, leather, wool, etc.*

Petrol and other petroleum products have been proclaimed by Great Britain as contraband of war. In view of the absolute necessity of such products to the use of submarines, aeroplanes, and motors, the United States Government has not yet reached the conclusion that they are improperly included in a list of contraband. Military operations to-day are largely a question of motive power through mechanical devices. It is therefore difficult to argue successfully against the inclusion of petroleum among the articles of contraband. As to the detention of cargoes of petroleum going to neutral countries, this Government has, thus far successfully, obtained the release in every case of detention or seizure which has been brought to its attention.

Great Britain and France have placed rubber on the absolute contraband list and leather on the conditional contraband list. Rubber is extensively used in the manufacture and operation of motors and, like petrol, is regarded by some authorities as essential to motive power to-day. Leather is even more widely used in cavalry and infantry equipment. It is understood that both rubber and leather, together with wool, have been embargoed by most of the belligerent countries. It will be recalled that the

United States has in the past exercised the right of embargo upon exports of any commodity which might aid the enemy's cause. (Senate Doc. No. 716, 63d Cong., 2d sess.)

Parliamentary discussion of contraband, 1916.—The British Government in 1916 was much concerned with determining what should be classed as contraband and there were differences of opinion. Mr. Leverton Harris, who had been directly associated with the administration, said in January, 1916:

I do not think it ought to be assumed that everything which reaches Germany or Austria benefits those countries or assists them to win the War. That was rather the line, I think, taken by the right hon. Gentleman opposite (Sir H. Dalziel). I know there are many people in this country who would like to see every conceivable commodity stopped from reaching our enemies. Personally I do not agree with them. On the contrary, I think there are many goods which have reached, and may to-day, be reaching Germany and Austria which are doing those countries a considerable amount of harm, and giving their Governments a great deal of anxiety. It would be very instructive and interesting if some expert could prepare a list of articles which are being imported, or are in the habit of being imported, into enemy countries, and classify them according to their military or economic value. Such a list would obviously start with such things as shells and other munitions; next you would find the raw materials or semi-manufactured articles which have a certain military value; then you might place food supplies, beginning possibly with such articles as lard, oil, and other fatty substances which are so much needed in Germany at the present moment; then you would come to articles which are used for the purposes of manufacture or commerce; and lastly, you would come to articles of pure luxury, the list ending perhaps with something like diamond necklaces or very expensive pictures. Everybody is agreed that it is essential to do everything we can to stop from going to Germany or Austria those articles which will appear at the top of the list—that is to say, articles of any military value or of any value as an economic food for the population in enemy countries. On the other hand, the importation into Germany or Austria of such articles as appear at the bottom of the list does not prolong the War for one minute; in fact, I suggest that such importation does material harm to our enemies and may shorten the War. Articles of luxury, such as jewels, and so on, have to be paid for like everything else, and they have to be paid for either

by exchange operations or else in gold or by the export of securities, with the result that we see at the present time—the very great depreciation in the value of the mark. The difficulty one has to face is in regard to the classes of articles that fall in the centre of the list, such articles, for instance, as tea or cocoa. I have changed my mind more than once about tea. Tea, I think, does not possess any very great military value, although I understand it is an alternative ration. It is certainly found that whilst we in this country are trying to keep certain classes of these goods away from Germany, the German Government also is endeavoring to check their sale. The German Government is doing all it can to prevent certain classes of articles, which are more or less luxuries or not necessities, from coming in from abroad and having to be paid for by the export of gold or securities. (Parliamentary Debates, Commons [1916], LXXVIII, p. 1309.)

This I will say in conclusion: The vital thing is to succeed in stopping German commerce. I believe we have a perfect right to do that by every principle of international law. I believe it is perfectly legitimate for a belligerent to cut off all commerce from his enemy and to destroy and injure it by economic pressure exerted to the fullest extent quite as much as by any military operation. I am sure it is not only a legitimate and effective but that it is also a humane method. I am quite sure that since this country has the power to exercise it this country ought to do so to the full. With that I think we ought to combine absolute respect for the rights of other nations. We ought to set an example of law-abiding and just treatment even of the smaller nations, and I believe myself that that policy, which I am convinced is right and in accordance with the best principles of British conduct in the past, is also the wisest and effective policy if we desire to carry out the main object of all these operations, namely, the destruction of the power of the enemy. (Ibid. p. 1816.)

British statement, 1916.—Lord Robert Cecil, Undersecretary of State for Foreign Affairs, replying to a question in the House of Commons, March 9, 1916, said:

I have constantly told the House that, in my view, the Declaration of London is an instrument which has no binding force whatever. The position with regard to this country is that certain parts, only certain parts, were selected at the outbreak of the War by the Government of the day as embodying what they believed to be the principle of international law

applicable to belligerent conditions, and believing that to be the case they have agreed, and they think it a convenient form, to refer to the Declaration of London as embodying it. But the Government never intended—at any rate, this Government does not intend—to be bound by the Declaration of London, apart from and so far as it differs from the principle of international law which prevailed at the outbreak of the War. I very much doubt, and it is very much doubted by lawyers, whether the issue of an Order in Council that the Government intend to adopt the Declaration of London would bind the Prize Court, and it is a matter of great doubt, in point of fact, if that Declaration contained principles and doctrines which were not in accordance with the principles of international law. But I can not make it too clear whether that is so or not, the policy of the Government is to abide by the principles of international law whether they are in favour of or against us, and to adhere to them, and them only, and it is only so far as the Declaration of London embodies those principles that they have any intention of being bound by its provisions. (Parliamentary Debates, Commons [1916], 80 H. C. Deb. 5 s., p. 1813.) * * *

If they are changes in principles, they ought not to be made, but if they are merely applying the principles to new conditions, that is not a change. All English lawyers are profoundly familiar with that. It is just as the ordinary growth of case law. You have your principle of law which is applied to the particular circumstances of each case, and the rulings thereupon being made make new definitions of the principle of law, which none the less always existed before those decisions. That is what I intended to convey, and that is, I think, the only sound view. (Ibid. p. 1814.) * * *

I am not quite sure what is meant by this phrase of a "real blockade." I do know that such legal opinion as I have been able to consult agrees with my own impression that to make any Declaration of Blockade, as we should have to do under the ordinary rules of international law, defining the limits and showing where the line of blockade was to be, if we attempted to do anything of that kind I think we should find ourselves in much greater legal difficulties than we find ourselves in at the present time. I do not see that we should get anything whatever by doing so. My hon. and gallant Friend said, "Why not apply the doctrine of continuous voyage?" We have applied it and worked it, and it is the very foundation of the whole of the action which we have taken. You can not blockade an enemy through a neutral country except by the operation of that doctrine. Our plan is to arrest all commerce of Germany, whether going in or

coming out, whether it comes through a neutral port or a German port; that is the whole object and the whole difficulty of our position. We have to discover for certain what is German and what is neutral commerce. I can not understand what more you can do by blockade. (Ibid. p. 1815.) * * *

British contraband list, 1916.—On April 13, 1916, the British foreign office issued a list of articles declared contraband of war, saying:

The list comprises the articles which have been declared to be absolute contraband as well as those which have been declared to be conditional contraband. The circumstances of the present war are so peculiar that His Majesty's Government consider that for practical purposes the distinction between the two classes of contraband has ceased to have any value. So large a proportion of the inhabitants of the enemy country are taking part, directly or indirectly, in the war that no real distinction can now be drawn between the armed forces and the civilian population. Similarly, the enemy Government has taken control, by a series of decrees and orders, of practically all the articles in the list of conditional contraband, so that they are now available for Government use. So long as these exceptional conditions continue our belligerent rights with respect to the two kinds of contraband are the same, and our treatment of them must be identical. (Par. Papers, Misc. No. 12 [1916].)

This list enumerated about 170 articles arranged alphabetically from "acetic acid and acetates" to "zinc."

Lists of contraband and categories.—The attempt to make lists of articles which may be declared contraband of war has in earlier wars, as in the World War, led to many controversies. Grotius, in 1625, however, enumerated the categories within which articles absolutely contraband, conditional contraband, and free articles might fall, though, as previously stated, not using the term "contraband." The practice of publishing lists of contraband has made it necessary to make frequent additions and changes in the list, which make the administration of the laws in regard to contraband difficult for the belligerent and the observance difficult for the neutral.

While the Instructions for the Navy of the United States Governing Maritime Warfare of June, 1917,

referred to a contraband list, it was a classification by categories, leaving a reasonable freedom for both belligerent and neutral. Article 24 of these rules is as follows:

> The articles and materials mentioned in the following paragraphs (*a*), (*b*), (*c*), and (*d*), actually destined to territory belonging to or occupied by the enemy or to armed forces of the enemy, and the articles and materials mentioned in the following paragraph (*e*) actually destined for the use of the enemy Government or its armed forces, are, unless exempted by treaty, regarded as contraband.
>
> (*a*) All kinds of arms, guns, ammunition, explosives, and machines for their manufacture or repair; component parts thereof; materials or ingredients used in their manufacture; articles necessary or convenient for their use.
>
> (*b*) All contrivances for or means of transportation on land, in the water or air, and machines used in their manufacture or repair; component parts thereof; materials or ingredients used in their manufacture; instruments, articles or animals necessary or convenient for their use.
>
> (*c*) All means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines, or documents, necessary or convenient for carrying on hostile operations.
>
> (*d*) Coin, bullion, currency, evidences of debt; also metal, materials, dies, plates, machinery or other articles necessary or convenient for their manufacture.
>
> (*e*) All kinds of fuel, food, foodstuffs, feed, forage, and clothing and articles and materials used in their manufacture.

In a list of articles of contraband of war it is customary to name clothing of military character. In modern warfare the important supply for a belligerent may be clothing of all kinds, as the supply of one kind of clothing may make it possible by substitution to supply another to the armed forces because almost any kind of clothing may be used for certain services where the combatants are not brought into immediate contact.

British decisions in World War.—The doctrine of continuous voyage received attention from time to time in the British courts during the World War. The conditions of commerce were such as to make transportation through neutral countries common. An elaborate statement on the subject was made by Sir Samuel Evans in the

case of the *Kim*, the *Alfred Nobel*, the *Bjornsterjne Bjornson*, and the *Fridland*, decided in September, 1915. He said:

I have no hesitation in pronouncing that, in my view, the doctrine of continuous voyage, or transportation, both in relation to carriage by sea and to carriage over land, had become part of the law of nations at the commencement of the present war, in accordance with the principles of recognized legal decisions, and with the view of the great body of modern jurists, and also with the practice of nations in recent maritime warfare.

The result is that the court is not restricted in its vision to the primary consignments of the goods in these cases to the neutral port of Copenhagen; but is entitled, and bound, to take a more extended outlook in order to ascertain whether this neutral destination was merely ostensible and, if so, what the real ultimate destination was.

As to the real destination of a cargo, one of the chief tests is whether it was consigned to the neutral port to be there delivered for the purpose of being imported into the common stock of the country. * * *

The argument still remains good, that if shippers, after the outbreak of the war, consign goods of the nature of contraband to their own order without naming a consignee, it may be a circumstance of suspicion in considering the question whether the goods were really intended for the neutral destination, and to become part of the common stock of the neutral country, or whether they had another ultimate destination. Of course, it is not conclusive. The suspicion arising from this form of consignment during war might be dispelled by evidence produced by the shippers. It may be here observed that some point was made that in many of the consignments the bills of lading were not made out "to order" simpliciter, but to branches or agents of the shippers. That circumstance does not, in my opinion, make any material difference. (The *Kim* [1915], p. 215; see also 1922 Naval War College, p. 50, 96–98.)

In the case of *Bonna* in 1918, the question was as to the condemnation of 416 tons of coconut oil shipped on a Norwegian steamship and seized in a Bristol port. The Crown contended that it rested on the claimants who were neutral—

to establish that the destination of the oil was neutral; and, further, that the oil was subject to condemnation on the ground

either (1) that it, and the margarine for the manufacture of which it was acquired, should, in the circumstances, be deemed to have an enemy destination; or (2) that such margarine, when manufactured, would to the knowledge of the claimants be consumed in Sweden in substitution for Swedish butter to be supplied to Germany. (The *Bonna* [1918], p. 123; see also 1922 Naval War College, p. 172.) * * *

Statistics were given in evidence to show the increase of the importation into Sweden of raw materials for margarine and of the production and sale of margarine, and to show the simultaneous increase of the export of butter from Sweden to Germany. They were interesting, and beyond doubt they proved that the more margarine was made for the Swedes the more butter was supplied by them to the Germans; and that when by reason of the naval activity of this country the imports for margarine production became diminished, the Swedish butter was kept for consumption within Sweden itself and ceased to be sent to the enemy. (Ibid. p. 175.)

Consignments.—In early times the place to which goods of the nature of contraband were to go was much more a matter of vital concern to a belligerent than the person of the consignee. Gradually the person to whom the goods are consigned has become a more important factor in determining the ultimate destination of such goods. During the World War, when the means of transportation were so highly developed, there arose many questions in regard to consignments.

In 1921, on appeal, a case was brought before the judicial committee of the privy council and Lord Parmoor stated:

The appellants are an import and export company claiming on behalf of Enrique Rubio, who was the shipper and consignor of certain boxes of Valencia oranges seized on the Norwegian steamships *Norne*, *Grove*, and *Hardanger*, during December, 1915, while on voyages from Valencia, in Spain, to Rotterdam, in Holland. The amount involved is not considerable, but it was stated that the case had been selected as a test case which would govern a number of other cases. * * *

The consignee named in the bill of lading covering the oranges shipped on the *Norne* was A. J. de Graaf, and the consignee named in the other two bills of lading, covering the oranges shipped on the *Grove* and *Hardanger*, was Van Hoeckel. * * *

The contention of the appellants is that the destination of the voyage was Rotterdam, and that if the voyage had been carried through without interruption the oranges would in the ordinary course of business have been offered to local dealers at public auction, thereby becoming part of the common stock of a neutral country, to whatever consumers they might ultimately be sold. It was said that if this contention is not accepted, and it is held that the anticipation that a large proportion of the oranges may go for consumption in Germany is sufficient to make them contraband, the consequence is that goods within the category of conditional contraband would be liable to seizure and condemnation wherever there was anticipation that they might be largely sold to enemy customers. * * *

Their Lordships are unable to hold that the mere fact that goods will be offered for sale by auction at the port of arrival is in itself conclusive of the innocency of their destination. It would appear to them to be too wide a generalization that whatever the special conditions may be, the goods could never be condemned as contraband, if once it is established that they would be offered at public auction in a neutral market. (1921 A. C. 765.)

On other grounds it was decided that at the time of seizure there was a substantial interest in the consignment held by a German firm and the judgment of the prize court that the oranges were lawful prize was affirmed.

Position of Admiral Rodgers.—Writing in 1923, Admiral W. L. Rodgers, United States Navy, took the point of view that modern trade systems call for changes in international law.

Blockade and contraband both operate against the organized belligerent effort of the hostile government. But new developments of international trade and transportation are rendering it possible that adherence to the old rules makes it increasingly difficult for a belligerent to disorganize and disrupt the national life of the enemy, yet this is a legitimate and humane method of practicing war.

The basis of principle of the chief rules now current were established before commerce and transportation assumed their present great scale through the agency of steam power. The size of nations, their power and their complexity have become so great that the old rules of contraband and blockade need great

modification. Present-day practice, however, by certain great powers, is in accord with present world conditions, no matter how loud conservative outcry may be against current practice. Great Britain's position of maritime preponderance for over a century has given her a singularly clear insight into the workings of international law. As we now wish to rival Great Britain in our merchant trade, we can not fail to find our national advantage in accepting the views of international law which she has so consistently maintained.

The position of the United States administration of the day, representing the nation, has varied according to requirements and interest of the nation, (or of special class interests), as it was either belligerent or neutral. Other nations vary in the same way.

In time of our neutrality we have stood for neutral rights of trade and freedom of the seas. In time of our belligerency we have stood for the rigor of the game, extension of contraband lists, continuous voyage, etc. In the Civil War our stand on continuous voyage was a forward step for belligerent privilege. Our views of immunity for private property during that war were different from those we urged before and after that period when other peoples were at war and the United States was neutral. (17 Amer. Jour. Int. Law [Jan. 1923], p. 7.)

Opinion of Sir Erle Richards.—The late Sir Erle Richards, who often during the World War maintained before British courts the rights of neutrals, said:

The particular items which can properly be included in lists of contraband must depend to some extent on the particular circumstances of each war, but it seems certain that belligerents must have the right to determine those lists in the first instance. An attempt to enforce fixed lists of contraband, irrespective of any future advance in chemistry, was made at the London Conference; but the agreement there arrived at was found to be wholly impracticable, and was abandoned by every one of the belligerent Powers. The scheme of the Declaration of London was to have three lists: the first of articles which might be treated as absolute contraband, the second of articles which might be treated as conditional contraband, the third of articles which could never be declared contraband at all. But these lists proved to be wholly inappropriate, and the war had not long been in progress before it was found that some articles in the third or free list were essential to the manufacture of munitions: raw cotton, rubber and metallic ores, for instance, were found to be of such importance in munition making that they were declared

to be absolute contraband, although in 1909 it had been agreed that they should never be declared contraband at all. The Allies refused to be bound by the Declaration in this respect from the very first, and the Central Powers soon followed suit. This experience teaches us that it is impossible to have lists fixed in neutral. (17 Amer. Jour. Int. Law [Jan. 1923], p. 7.)

Moore on doctrine of contraband.—Judge Moore in 1923, referring to the practice and arguments made during and subsequent to the World War in regard to absolute and conditional contraband, said:

During the recent war there were exigent belligerent measures which in effect merged the second category in the first. These measures were defended on the ground that the "circumstances" of the war were "so peculiar" that "for all practical purposes the distinction between the two classes of contraband" had "ceased to have value"; that "so large a proportion of the inhabitants of the enemy country" were "taking part in the war, directly or indirectly, that no real distinction" could be drawn "between the armed forces and the civilian population"; that "similarly" the enemy government had "taken control, by a series of decrees and orders, of practically all the articles in the list of conditional contraband, so that they are now available for government use"; and that "so long as these exceptional conditions" continued, "belligerent rights in regard to the two kinds of contraband" were the same and the "treatment of them must be identical."

Probably under the influence of these arguments, and without full appreciation of the implication, which they seem to have been anxiously designed to convey, that the measures were to be regarded as highly emergent and altogether exceptional, it has lately been intimated that the distinction, defended and maintained through æons of almost forgotten time, between articles absolutely and articles conditionally contraband, has been shown by the recent war to be unsound and should no longer be preserved. One writer has indeed gone so far as to assert that the distinction "dates from the time when armies were very small, and comprised only a very small fraction of the belligerent countries," a statement that would have astonished Grotius, and that must equally astonish those who are familiar with the history, either legal or military, of the wars growing out of the French Revolution and the Napoleonic Wars. For reasons such as these it has been suggested, but not, I believe, by any government, that the category of "conditional contraband" should now be evacuated and decently interred, and its contents

included in the absolute list. The suggestion is startling, since its acceptance would at once render illicit practically all trade with countries at war, and put in jeopardy much of the trade even between countries not at war.

But we must not permit ourselves to be betrayed by illusions of novelty. We do our ancestors grave injustice if we think they admitted that a belligerent might capture at sea and confiscate all commodities destined to his enemy which perchance might be used for a military purpose, but believed that belligerent governments then could not or did not appropriate within their own jurisdiction whatever they needed for war. Our ancestors were not so hopelessly senseless. They were, on the contrary, consciously engaged in a conflict, which has not ceased, between belligerent claims to stop trade and neutral claims to carry it on. Neutrals denied the right of belligerents to capture and confiscate anything but articles primarily useful for war. So far as concerned foodstuffs, the defenders of neutral rights, while fully aware that armies must and did eat, maintained that the noncombatant mouths always vastly outnumbered the combatant, so that the preponderant consumption of food was ordinarily not hostile. They carried their point, with the single concession, the narrowness of which was mutually and perfectly understood, that foodstuffs should become contraband if, when seized, they were destined for distinctively military use. (Moore, International Law and Some Current Illusions, p. 26.)

Admiral Jellicoe on treatment of seized vessels.—Admiral Jellicoe, writing of the operations of the British fleet, 1914–1916, says:

The fate of the detained ship was decided in London on receipt of the report of examination. As was perhaps natural, the sentence on many ships' cargoes pronounced in London was not accepted without question from the Fleet, and a good deal of correspondence passed with reference to individual ships. We, in the Fleet, were naturally very critical of any suspicion of laxity in passing, into neutral countries bordering on Germany, articles which we suspected might find their way into Germany, and constant criticisms were forwarded by me, first to the Admiralty, and, later, to the Ministry of Blockade, when that Ministry was established. The difficulties with which the Foreign Office was faced in regard to neutral susceptibilities were naturally not so apparent in the Fleet as to the authorities in London, and though many of our criticisms were perhaps somewhat unjustifiable, and some possibly incorrect, it is certain that in the main

they were of use. Indeed, they were welcomed in London as giving the naval point of view. (The Grand Fleet, 1914–1916, p. 76.)

Convoy and certification.—On April 16, 1918, the Dutch Minister of Marine announced to the First Chamber that "the Government would send a convoy of Government passengers and goods to the Netherlands East Indies." Mr. Balfour in a dispatch to the minister at The Hague said on April 25, 1918, that:

> You should let the Netherlands Government know that His Majesty's Government of course do not recognise the "right of convoy," and that they will exercise the belligerent rights of visit and search of merchant vessels should the Netherlands Government carry out their proposal. (Parliamentary Papers, Misc. No. 13 [1918], p. 4.)

The Dutch, however, continued their preparations and on April 29, 1918, the Netherlands Legation informed Mr. Balfour that:

> In connection with the decision of the Netherlands Government to send a convoy to the Dutch East Indies to relieve military men, and to send out Government officials with their families and some urgently needed military and other Government goods, I have the honour, in accordance with instructions received, to inform your Excellency that the said convoy will be composed of the following:
>
> 1. Her Majesty's *Hertog Hendrik*, accompanied by a coal boat requisitioned for that purpose, for the purpose of bunkering during the voyage.
>
> 2. A Netherlands merchant ship, transformed into a man-of-war according to the rules of the VIIth Convention, 1917, for the transport of military men to the Dutch East Indies, having as cargo military stores.
>
> 3. A Netherlands merchant ship requisitioned by the Netherlands Government under convoy of the man-of-war mentioned *sub* 1 for the transport of Government passengers with their families, and having for cargo exclusively goods of the Netherlands Government destined for the Government of the Dutch East Indies.
>
> The loading of all goods and the embarkation of all passengers will be effected under strict supervision of Netherlands Government officials.
>
> The passengers and their luggage will be submitted to a strict examination.

No private correspondence may be carried. The ships carry neither ordinary nor parcel mail.

Of the Government goods, the usual manifesto will be produced with certificates of origin issued by the Inspector of Import Duties.

I have been directed to add that it is intended to send the above convoy about the middle of the month of June, and that it will sail round the Scottish Isles and the Cape of Good Hope. (Parliamentary Papers, Misc. No. 13 [1918], p. 5.)

Various delays occurred, but on May 31 a communiqué was issued by the Dutch explaining that:

Warships will therefore only carry naval personnel and war supplies, and the merchant ships only Government passengers with their families and Government goods. It is not intended to institute under protection of warships commercial intercourse which, without such protection, would not be permitted by the belligerents according to their views of commercial liberty of neutrals. No mail will be carried. It is obvious that convoy commandant would not tolerate any examination of the convoyed ships. According to usage, he will, on meeting belligerent warships, permit perusal of cargo documents in his custody by commander at latter's request. In fact, those documents will be communicated to Powers concerned before departure from Netherlands. As is customary in these times when despatching warships with view to preventing misunderstanding in event of meeting belligerent warships, notice has been given to Governments of belligerents of the despatch of the convoy. (Ibid. p. 7.)

On June 7, 1918, in a note to the Dutch minister at London Mr. Balfour said:

2. It was therefore with considerable surprise that I received on the 31st ultimo, by telegraph from Sir W. Townley, a translation of an official notice published in the Dutch press that morning by the Ministry of Marine at The Hague, announcing among other things that "the commander of the convoy would not tolerate any examination of the convoyed ships."

3. In the face of this announcement, so made, His Majesty's Government feel compelled to reiterate in the most formal manner that the right of visit and search which Great Britain, whether she was a neutral or a belligerent, has, in conformity with the rules of international law, consistently upheld for centuries, is not one which she can abandon.

4. As the Netherlands Government is well aware, the claim that immunity from search is conferred on neutral merchant ves-

sels by the fact of their sailing under the convoy of a man-of-war flying the national flag has never been conceded by this country. By the course, therefore, which they are now pursuing, they do in fact demand that Great Britain shall abdicate her belligerent right to stop contraband trade by the regulated exercise of naval force, and, in the middle of a great war, abandon the allied blockade. This is a demand to which Great Britain could not possibly accede. (Ibid. p. 8.)

After a lengthy memorandum the British Government, however, waived its "right of visit and search in this particular case, as an act of courtesy" of an exceptional nature, and the following statement of conditions was made:

(*a*) A detailed list of all passengers sailing in the convoy, to be furnished to His Majesty's Government, none but Dutch Government officials and their families being allowed to proceed.

(*b*) Full particulars of the cargo on board any merchant vessel sailing in the convoy to be supplied in the same way as is now done by the Netherlands Oversea Trust in respect of ships under their control.

(*c*) The Netherlands Government to give a formal guarantee that no goods shipped in the convoy are either wholly or in part of enemy origin.

(*d*) The ships sailing under the Dutch naval flag, including the converted liner, not to carry any civilian passengers, nor any goods or articles other than warlike stores destined for the colonial authorities or forces, of which complete lists should be furnished.

(*e*) No mails, correspondence, private papers, printed matter, or parcels to be carried by any ship in the convoy (except official despatches of the Dutch Government).

(*f*) The convoy not to sail until the above stipulated particulars and undertakings have been furnished and have been found satisfactory by the British authorities. (Ibid. p. 9.)

The Dutch Legation at London in a note of June 15, 1918, said:

In reply to the note you were good enough to address to me on the 7th instant, I have the honour to inform you, in accordance with instructions received, that the Netherlands Government are pleased to see that both the British and the Netherlands Governments agree as to the mode of carrying out the plan for the convoy mentioned therein. The conditions stated correspond

almost identically with the intentions communicated in my note of the 29th April, last. A complete list of passengers had also been prepared, to be sent, together with full particulars of the cargoes, to all foreign Legations concerned, as the Netherlands Government wish to avoid even any possible impression that anything is being concealed. They can not agree with the point of view that their readiness to conform to the views of the belligerents of the liberty of neutral commerce is difficult to reconcile with the whole plan of the convoy. The protection of the men-of-war has the advantage of excluding all unnecessary delay. The Netherlands Government are fully aware that the British Government do not recognise the right of convoy upheld by the first-named Government and all other nations, but, in their opinion, this point of international law can be left out of account in the present case of a very special sort of convoy destined to transport between the mother-country and its colonies none but goods for the service of the Government and Government passengers, with their families. (Ibid. p. 10.)

This case involved official Government transport and a form of certification which was resorted to as a matter of convenience such as might often be found advantageous by both parties. Mr. Balfour's note of June 7 had referred particularly to neutral merchant vessels.

The "Black Lists."—

Closely connected with the legal conception of trading with the enemy, is the institution of the Statutory or "Black Lists" initiated for the first time in 1915 by Great Britain and France. All commercial intercourse by British and French citizens with the persons or firms included therein was strictly forbidden on account of the enemy nationality or hostile associations of such persons or firms. By section 1, subsection 3 of the Trading with the Enemy (Extension of Powers) Act, 1915, corrections and additions of further persons or firms to the Statutory Lists could be made by Order in Council, and were in fact so made from time to time up to the end of the war.

In the case of Great Britain, the adoption of the "Black Lists" was a distinct departure from the ordinarily and generally accepted criteria governing enemy character. The individuals or corporations comprised in the lists with whom intercourse by British subjects was rendered illegal as involving trading with the enemy, were persons or firms who, in the great majority of cases, were resident or carrying on business in neutral countries. It would thus appear that, in so far at least as the "Black Lists"

were concerned, Great Britain was applying the test of nationality, and not the traditional criterion of domicile. (Colombos, Law of Prize, p. 224.)

Proposal to prohibit export of contraband.—At the meeting of the American Society of International Law in 1915, Professor Butte proposed that in time of war the export of contraband be prohibited by neutrals. He argued that:

Under present conditions, the captor always acts on the presumption that a neutral ship bound for an enemy port or a neutral port near enemy territory is transporting contraband. Except when under convoy, such vessels carrying a mixed cargo are presumed guilty. Their innocence must be established by a visit and search; their manifest and other papers have little or no probative value. Under modern conditions, with large ships and large miscellaneous cargoes, the search of each vessel consumes many hours, and not infrequently can not be carried out on the high seas at all. The neutral ship is often taken into the belligerent's nearest port and detained there for days to be unloaded and reloaded, to the great damage and loss of neutral shippers and shipowners. So long as neutral states allow the export of contraband from their shores, it seems that they have no just grounds of complaint against a thorough search of each vessel intercepted by the belligerent, however long it may reasonably require and whatever the means that may be reasonably necessary. *The belligerent must obtain for himself the assurance that neutral states now fail or refuse to give.* Surely the belligerent would be glad to be relieved of the burden, the liability, and the endless difficulties and controversies with neutrals connected with the execution of these minute searches, if he had some assurance upon which he could rely that no contraband was put aboard ship in neutral ports.

By the enforcement of such prohibitory statutes, neutral maritime commerce would be safer, because the risk of confiscation of ships or of condemnation to pay expenses and costs because of contraband found on board would be almost entirely eliminated; and delays and losses to a shipper of innocent goods in the same vessel would be avoided. A shipper of innocent goods can not feel safe under the existing rules and the uncertainties as to the doctrine of infection. How is he to know when he sends his goods on board (unless he owns the ship himself) whether contraband will be carried, and if so, what proportion by value, weight, volume and freight of the whole cargo? And *who* knows

what proportion in law infects the ship and renders it liable to confiscation? His goods may be thrown out at the first convenient port; and it is incumbent upon him to recover them and to reload and reship them, if he can find the space, at his own expense. He has no recourse against the captor for the interruption of his trade, the damage to himself or his customers, or for other losses by reason of the delay. In many cases, especially if his goods are perishable, he is fortunate if he recovers a fraction of their value.

Further, the prohibition of the export of contraband from neutral states would tend to restrain the belligerent from arbitrarily extending the list of contraband articles. (Amer. Soc. Int. Law, Proceedings, 1915, p. 127.)

Treaty provisions.—The United States has been a party to many treaties in which certification in varying forms has been recognized as in the treaty with Bolivia, 1858:

ARTICLE XXII

To avoid all kinds of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting parties, they agree that, in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other must be furnished with sea-letters or passports, expressing the name, property and bulk of the ships, as also the name and place of habitation of the master and commander of said vessel, in order that it may thereby appear that said ship truly belongs to the citizens of one of the parties; they likewise agree that such ships being laden, besides the said sea-letters or passports, shall also be provided with certificates, containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed in the accustomed form; without such requisites said vessels may be detained, to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall prove to be owing to accident, and supplied by testimony entirely equivalent.

ARTICLE XXIII

It is further agreed that the stipulations above expressed, relative to the visiting and examination of vessels, shall apply only to those which sail without convoy; and when said vessels

shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and, when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

Other treaties contain identical or similar provisions: Brazil, 1828; Central America, 1825; Chile, 1832; Colombia, 1824 and 1846; Dominican Republic, 1867; Ecuador, 1839; France, 1778 and 1800; Guatemala, 1849; Hayti, 1864; Mexico, 1831; Netherlands, 1782; Peru, 1851, 1870, and 1880; Prussia, 1785 and 1799; Salvador, 1850 and 1870; Spain, 1795; Sweden, 1783; Venezuela, 1836 and 1860.

Certification of cargo.—The treaty provisions just mentioned were aimed to secure regularity of papers and to avoid unnecessary delays. The papers would to some extent facilitate visit and search, but would not necessarily exempt the vessels from seizure. The absence of such papers would make the vessel liable to be declared prize.

Various propositions have been made from time to time in regard to methods of avoiding the inconvenience of visit and search. Many of these plans have involved placing of additional obligations upon the neutral. Some of these contain obligations which if not fulfilled by the neutral state would give rise to new international differences and would place a part of the burden of the war upon the neutral. Even if a neutral should be conscientious in investigating and certifying the cargo and character of a vessel about to leave port, such a vessel might take on cargo after leaving port as has been the practice in the days of smuggling when the rewards are great. It can not always be presumed that the officers investigating and certifying to cargoes would not in some countries yield to inducements to make false returns. Under the proposed systems the right to visit and search was to be reserved, thus placing the neutral under a new obligation merely without necessarily relieving the vessel from any inconvenience.

Professor Hyde in commenting on certain aspects of the matters involved said:

Doubtless latitude should be accorded a belligerent in attempting to check traffic in contraband, and to ascertain its existence on the high seas. The procedure, however, whereby innocent ships are forced to deviate from their courses, put into belligerent ports and there submit to protracted searches as a means of indicating whether they or other vessels are participating in the war, or are about to do so, appears to be at variance with the demands of justice.

The British argument and the facts which supported it indicate why the right of search as exercised in previous wars is inapplicable to modern conditions. There is solid reason for the attempt to place within the reach of a belligerent, by some other process less injurious to innocent shipping, information concerning the nature of neutral cargoes and the voyages of neutral vessels. It is believed that neutral governmental certification of ships' papers would offer as reliable assurance as to facts ascertainable by search as could be furnished by a neutral convoy. Moreover, the burden of making such certification might be fully compensated by benefits derived from the freedom from annoyances under the system now prevailing. General approval of a procedure establishing reasonable neutral guarantees effected through increasing governmental oversight of neutral commerce, may cause the exercise of the belligerent rights of visit and search to sink into a much desired desuetude. (2 Hyde, Int. Law, p. 444.)

Doctor Lawrence had previously, as Professor Hyde indicates, raised this question when after reciting the facts as to the cases arising during the South African war Doctor Lawrence says:

It is clear from the bare recital of these facts that in any future naval struggle carried on by powerful maritime states the position of neutrals possessed of a great mercantile marine will be intolerable. The only way of escape is to modify the right of search to such an extent that belligerents may obtain reasonable assurance of the innocence of harmless cargoes, without inflicting on neutrals the ruinous and humiliating process of deviation to a belligerent port and a complete overhaul therein of all the vessel contains. The continuance of the existing state of things involves grave danger of a great extension of any naval war that may break out in the near future. It is worthy of consideration whether some system of official certificates could not be devised,

whereby neutral vessels could carry, if they chose, satisfactory assurances that their passengers and cargoes consisted only of the persons and goods set forth and described in their papers. A visiting belligerent officer could then decide whether to effect a capture or not, without the need of a preliminary search. (Principles of Int. Law, 4th ed., p. 473.)

Letters of assurance, 1917.—Lord Robert Cecil, Minister of Blockade and Undersecretary of State for Foreign Affairs, said in the House of Commons, March 27, 1917:

There is one other device which I am going to describe to the House and which has really been of great assistance to the blockade. I should like to describe it, because I believe it to be the type of device which ought to be employed in a blockade of this description. About the time I was appointed, the Consul-General of the United States came to see me, and he pointed out to me: "You say in your diplomatic representations to the United States that, after all, British goods suffer just as much as American goods from the blockade, and that we are not really injuring American goods and American traders in any way beyond the injury which the British trader suffers. That is not quite right, because the British trader can go to your War Trade Department before he makes any arrangements with regard to the shipping of the goods and he can obtain a licence. When he has got his licence he knows that it is all right, and he can proceed to secure ship's space and make his financial arrangements. He is able to carry on his trade without fear that it will be stopped at the last minute. That is not the case in the United States. Cannot you do something to supply that want?" We thereupon organised a system of Letters of Assurance as it is called in the States. It is perfectly voluntary. Nobody need take out letters of assurance unless he wishes to do so, but if he likes to go to our authorities there and make inquiries whether a particular ship is likely to meet with difficulty, he can obtain from those authorities in America letters of assurance, and then the goods, generally speaking, unless something exceptional intervenes, go through without any trouble or difficulty. That device has been of enormous importance in smoothing the difficulties which had before then existed with America, and it has been of equal importance in enabling us to know exactly what is going on in reference to exports from the United States to these neutral countries. It has enabled us, without any unfairness or injustice, to regulate the

supplies to these neutral countries. (Parliamentary Debates, Commons, 92 H. C. Deb. 5 s., p. 254.) * * *

I think the visit of the Consul-General to me took place rather more than a year ago, and I established this system as soon as it could be established. I should think it is about a year ago. It has taken some little time to get it in working order. It is entirely a voluntary system, but now, though I do not say it is universal, it is very largely utilized by traders between the United States and neutral countries. In my judgment, as the result of these measures and other measures, because, of course, they were accompanied by other measures of general tightening-up the various devices which before existed, there has been for some months past a complete cessation of overseas importation into enemy countries. I will give some instances of that in a moment. My hon. Friend the Member for Devizes (Mr. Peto) said that we had really done nothing, at any rate up to the summer or the third quarter of 1916, because we had not succeeded in stopping the trade of what I will call, roughly, the home produce of these neighboring countries. I think he must forget that right through the early stages the question of the home produce of neighboring neutrals was never raised. The whole question which was then discussed was, "Are you really stopping the overseas trade and the imports into Germany?" That was accomplished completely, or substantially completely—nothing is complete in this world—about June or July of last year. * * *

I have had some figures prepared. Three or four of them I do not think will do any injury to the State, at any rate, some of them will not. The form in which these figures have been prepared deals with the whole of the neutral countries—that is to say, the three Scandinavian countries and Holland, all in a lump. After all, that is the real test. If you can show that the imports into the whole of these countries have been reduced to something about either just over or just under the pre-war normal figure, you may fairly conclude that there is no considerable direct import into the enemy country. * * *

I felt when we had succeeded in stopping all imports, apart from questions of smuggling and things of that kind—all overseas imports—we still had not done all that was necessary in order to complete the blockade of Germany. There was the question of the home produce of the border neutrals. That is a much more difficult subject to deal with, as my hon. Friends who have spoken will realise. The foundation of a blockade is the prize; that is the sanction. An ordinary blockade entirely depends upon it. You can only stop ships and goods going to a blockaded port which are and can be condemned in a Prize Court. Where you

have to deal with a direct blockade, the matter is perfectly simple. You merely have to ascertain that the ship is going to a blockaded port and put it into a Prize Court, and, if you can prove that fact, the ship is condemned as a matter of course. The House is aware that that is not the problem with which we have to deal here. We have to deal with an indirect blockade, that is, a blockade through neutral countries. There the position is much more difficult. You can stop and get condemned in a Prize Court any goods which are going into the neutral countries, the ultimate destination of which is the enemy country. That is described in our text books as "continuous voyage," and I believe in the American text books it is described as the "doctrine of ultimate destination." That is the point. We have acted to the full on that doctrine, and have stopped all goods, the ultimate destination of which was Germany or any enemy country. (Ibid. p. 258.)

General.—It is evident that the problem of ratio determining liability of a vessel to condemnation is not confined to a single standard but may be value, weight, volume, or freight charges of cargo. Doubt may easily arise as to any of these. Lists of named specific articles, contraband of war, may not include all articles which from their nature might be classed as contraband. The enumeration of categories such as food, fuel, clothing may be inclusive though less definite. Foods consigned to order may be sent to a prize court. Some other consignments may be suspicious and receive similar treatment. The burden of proof of liability before the World War rested, in general, on the captor. Naturally the relation of ports of neutral states to the means of communication with belligerent states would influence the opinion upon the probable ultimate destination of cargo upon a vessel that had been brought-to for visit and search. A certificate of a neutral official as to the innocent character of the goods might not be regarded as proof of such character, as other goods might have been taken on at sea or elsewhere after sailing. A letter of assurance from one belligerent might be a ground of suspicion to the other that there was some collusion between the shippers and the belligerent.

The responsibility for seizure must rest upon the commander of the visiting vessel of war. While the master of a merchant vessel may consider that his vessel is exempt from seizure, the commander of the visiting vessel of war may have information not possessed by the master of a merchant vessel and suspicion justifies taking the merchant vessel before the prize court.

In the situation as stated there are goods of such character that they may by well-known processes be converted into articles of special use in war and under modern conditions the immediate consignment to a neutral port may have little significance in determining the ultimate destination. Certification of innocent character and similar documents are not recognized as binding in international law. The master has good grounds for maintaining exemption from seizure, but these are not sufficient to preclude seizure.

SOLUTION

The contentions of the master are not grounds sufficient to exempt the merchant vessel from liability to seizure.

Situation II

VISIT AND SEARCH

Note.—In this situation it is granted that the vessels have a legal right to fly the flags mentioned and that all states conform in their actions to the rules of international law.

States X and Y are at war. Other states are neutral. A small torpedo boat of X meets a large passenger liner bound for a port of Y and known to be privately owned by a company of Z and flying the flag of Z. The commander of the torpedo boat can not search the liner nor spare a prize crew, and his duties do not permit him to escort the liner into port. He suspects there may be some contraband on board and signals the liner to go to a named port of X for search. The liner sails away and goes to the port of Y and is subsequently met on the high sea by the same torpedo boat.

What is the liability of the liner of Z?

SOLUTION

Under existing international law the movements of neutral vessels on the high sea are subject to belligerent direction only when under belligerent control by a prize crew or escorting vessel and the liner has incurred no liability.

NOTES

Naval War College discussions.—The subject of visit and search has naturally received much consideration at this Naval War College. Certain aspects of the subject received extended consideration in 1905 (1905 N. W. C. International Law Topics, 48–61), and less extended discussions have been carried on at other times, while frequent references to visit and search have been made in other discussions. The conduct of visit and search has, however, been particularly prominent in relation to

other practices in consequence of events in the World War, 1914–1918.

Early understanding.—In a report of the British law officers in 1753 the law of capture with other matters relating thereto was discussed:

> When two powers are at war, they have a right to make prizes of ships, goods, and effects of each other upon the high seas; whatever is the property of the enemy may be acquired by capture at sea; but the property of a friend can not be taken, provided he observed his neutrality.
>
> Hence the law of nations has established:
>
> That the goods of an enemy on board the ship of a friend may be taken.
>
> That the lawful goods of a friend on board the ship of an enemy ought to be restored.
>
> That contraband goods going to the enemy, though the property of a friend, may be taken as prize, because supplying the enemy with what enables him better to carry on the war is a departure from neutrality.
>
> By the maritime law of nations universally and immemorially received, there is an established method of determination whether the capture be, or be not, lawful prize.
>
> Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize in a court of admiralty, judging by the law of nations and treaties.
>
> The proper and regular court for these condemnations is the court of that State to whom the captor belongs.
>
> The evidence to acquit or condemn, with or without costs or damages, must, in the first instance, come merely from the ship taken, viz, the papers on board, and the examination on oath of the master and other principal officers; for which purpose there are officers of Admiralty in all considerable sea ports of every maritime power at war, to examine the captains and other principal officers of every ship brought in as prize, upon general and impartial interrogatories. If there do not appear from thence ground to condemn as enemy's property, or contraband goods going to the enemy, there must be an acquittal; unless from the aforesaid evidence the property shall appear so doubtful, that it is reasonable to go into further proof thereof. (2 Marsden, Laws and Custom of the Sea, p. 350.)

The "*Zamora*," *1916.*—This case, which was very fully argued and upon which a long opinion was given, went

on appeal to the judicial committee of the privy council. In the opinion Lord Parker, of Waddington, said:

It was suggested in argument that a vessel brought into harbor for search might, before seizure, be requisitioned under the municipal law. This point, if it ever arises, would fall to be decided by a court administering municipal law, but from the point of view of international law it would be a misfortune if the practice of bringing a vessel into harbor for the purpose of search—a practice which is justifiable because search at sea is impossible under the conditions of modern warfare—were held to give rise to rights which could not arise if the search took place at sea. ([1916] 2 A. C. 77; see also 1922 N. W. C. Int. Law Decisions, p. 126.)

Case of the "Maria," 1799.—The case of the *Maria*, decided by Sir William Scott in 1799, became almost classic as stating the British position on visit and search. In the beginning Sir William says:

I state a few principles of that system of law which I take to be incontrovertible.

1st, That the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation. I say, be the ships, the cargoes, and the destinations what they may, because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists. This right is so clear in principle, that no man can deny it who admits the legality of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured, it is impossible to capture. Even those who contend for the inadmissible rule, that *free ships make free goods*, must admit the exercise of this right at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice; for practice is uniform and universal upon the subject. * * * The right must unquestionably be exercised with as little of personal harshness and of vexation in the mode as possible; but soften it as much as you can, it is still a right of force, though of lawful force—something in the nature of civil process, where force is employed, but a lawful force which cannot lawfully be resisted.

For it is a wild conceit that wherever force is used, it may be forcibly resisted; a lawful force cannot lawfully be resisted. The only case where it can be so in matter of this nature, is in the state of war and conflict between two countries, where one party has a perfect right to attack by force, and the other has an equally perfect right to repel by force. But in the relative situation of two countries at peace with each other, no such conflicting rights can possibly coexist. (1 C. Rob. Admiralty Reports, p. 340.)

After a considerable discussion of convoy the judgment speaks of bringing vessels in for further inquiry than can be made at sea.

Thirdly; another right accrued, that of bringing in for a more deliberate inquiry than could possibly be conducted at sea upon such a number of vessels, even those which professed to carry cargoes with a neutral destination. * * *

I take the rule of law to be, that the vessel shall submit to the inquiry proposed, looking with confidence to those tribunals whose noblest office (and I hope not the least acceptable to them) is to relieve, by compensation, inconveniences of this kind, where they have happened through accident or error; and to redress, by compensation and punishment, injuries that have been committed by design. (Ibid.)

Bringing seized vessels to port.—Domestic legislation (United States Revised Statutes, secs. 4615, 4617) and international regulation (Institute of International Law, 1913, art. 103) and many national regulations (Russian, 1895, art. 22; Italy, 1915, art. 11; German ordinance, 1909, art. 111) provide for bringing seized vessels to port. These all imply that, either in charge of a prize crew or under escort, the vessel which has by visit and search at sea been found liable to suspicion of acts which would make it subject to prize-court procedure should remain under the control of the belligerent until delivered to the prize court. None of these regulations provide for sending in a neutral merchant vessel in order that the search for evidence shall be made in port, though if suspicion exists or is aroused at the point of visit and search at sea it would be justifiable to send the vessel to port for further investigation or for confirmatory evidence.

Resolution of the Institute of International Law, 1913.—In the Oxford Manual of Naval War, drawn up and approved by the institute at its Oxford meeting in 1913, articles 32 and 100 give the general principles in regard to visit and search and seizure. These resolutions have been translated as follows:

ARTICLE 32. *Public and private vessels—Stopping, visit, and search.* All vessels other than those of the navy, whether they belong to the State or to individuals, may be summoned by a belligerent warship to stop that a visit and search may be conducted on board them.

The belligerent warship, in ordering a vessel to stop, shall fire a charge of powder as a summons and, if that warning is not sufficient, shall fire a projectile across the bow of the vessel. Previously or at the same time, the warship shall hoist its flag, above which at night, a signal light shall be placed. The vessel answers the signal by hoisting its own flag and by stopping at once; whereupon, the warship shall send to the stopped vessel a launch manned by an officer and a sufficient number of men, of whom only two or three shall accompany the officer on board the stopped vessel.

Visit consists in the first place in an examination of the ship's papers.

If the ship's papers are insufficient or not of a nature to allay suspicion, the officer conducting the visit has the right to proceed to a search of the vessel, for which purpose he must ask the cooperation of the captain.

Visit of post packets must, as Article 53 says, be conducted with all the consideration and all the expedition possible.

Vessels convoyed by a neutral warship are not subject to visit except in so far as permitted by the rules relating to convoys.

ARTICLE 100. *Formalities of seizure.* When, after the search has been conducted, the vessel is considered subject to capture, the officer who seizes the ship must:

1. Seal all the ship's papers after having inventoried them;
2. Draw up a report of the seizure, as well as a short inventory of the vessel, stating its condition;
3. State the condition of the cargo which he has inventoried, then close the hatchways of the hold, the chests, and the storeroom and, as far as circumstances will permit, seal them;
4. Draw up a list of the persons found on board;
5. Put on board the seized vessel a crew sufficient to retain possession of it, maintain order upon it, and conduct it to such port as he may see fit.

If he thinks fit, the captain may, instead of sending a crew aboard a vessel, confine himself to escorting it. (Resolutions of the Institute of International Law, Scott, Carnegie Endowment, pp. 181, 197.)

Changing conditions of maritime war.—A common contention is that the change in tonnage, the use of steam, the introduction of undersea craft, and other recent modifications in sea transportation have rendered early maritime laws inoperative. That the manner of application of a law may be modified through such changes is usually admitted, but that the principle of the law is no longer applicable may at the same time be denied. During the World War the character of vessels of war and merchant vessels varied more widely than in any previous war. There were changes in tonnage, speed, stability, method of propulsion, use of subsurface craft, and the like. One group maintained that as corresponding changes had been made or might be made both in the one and the other type of craft the belligerent could not justly contend that the same principles did not apply in the relations of its vessels of war to neutral vessels as applied in earlier wars. The fact that one type of belligerent vessel of war was relatively weaker than a merchant vessel did not give it special exceptional belligerent rights as regards a neutral vessel, nor did the fact that another type of vessel of war might find it particularly hazardous to act in a manner formerly sanctioned by the law of war give the belligerent the right to enunciate new principles of law. During the World War it was from time to time affirmed by the belligerents that the firm intent was to follow in their prize courts accepted international law.

Statement of British attorney general, 1917.—Sir Frederick Smith in 1917, while British attorney general, after reviewing conventions and practice said:

From these considerations it follows that the commander of a belligerent warship may not dispense with the practice of visit and search in regard to suspected or enemy merchantmen. It is his duty, before resorting to forcible measures, to ascertain the

true character of the vessel, the nationality of the passengers and crew on board, and the nature and destination of the cargo. (The Destruction of Merchant Ships under International Law, p. 16.)

It is inevitable that in maritime warfare belligerent interests may conflict with neutral interests. The relations between these interests have gradually become defined and at the beginning of the World War were considered fairly established. Of this the attorney general said:

When, in naval warfare, the interests of belligerents come into conflict with those of neutrals, it does not follow, under the existing law of nations, that the former predominate over the latter. Neutrals have the right to sail the high seas; they are entitled to use this international highway unmolested, as long as they observe the clearly defined obligations of neutrality. Belligerents' convenience may not override neutral rights. Indeed, it may be argued in accordance with the fundamental principles of jurisprudence applicable to the society of states that, as war is from the point of view of international law an abnormal condition, the right of neutrals to use the high seas and carry on their legitimate commerce even prevails over the claims of belligerents to make use of this or that portion of the open sea for the purposes of their conflict. So long as neutral vessels do not encroach within the limited theatre of warlike operations, so long as they commit no violation of the rules of neutrality, for example, as to blockade running, contraband trading, or unneutral service, they are entitled to be left alone, subject, of course, to visit and search in case of suspicion. The observance of their obligations necessarily implies the enjoyment of relative rights on their part, and a corresponding imposition of indefeasible obligations on belligerents. (Ibid. p. 73.)

J. A. Hall's opinion, 1921.—Referring to the French comment on the place of search, J. A. Hall says:

Except that the last paragraph might imply that the mere fact of being in the zone of hostilities is by itself a matter of suspicion sufficient to justify the vessel being diverted for search in port, which in some geographical circumstances could scarcely be reasonable, the declaration by the French Ministry of Marine seems a very fair statement of what the modern right of visit and search should be. Apart altogether from the special circumstances of the Great War arising out of Germany's illegal

practices at sea, the following permanent reasons for this development of the right seem to afford it full justification:

1. The ship's papers in these days, when telegraphs and other means of rapid communication are available for merchants, need afford no reliable indication of the destination of the cargo.

2. The destination of the vessel owing to railways and other modern means of land transport is no criterion of the destination of the cargo.

3. The ship's officers may be equally ignorant on this point.

4. Modern means of communication, while reducing the value of evidence from the ship, has enormously increased the powers of a belligerent government to obtain information from the vessel's port of departure and pass on instructions to its examining cruisers.

5. The size of modern merchant ships enables them to keep at sea when weather conditions make even visiting them impossible.

6. The necessary extension of contraband to cover articles of small bulk but of great value for war, together with the huge cargo capacity of modern ships, has made concealment easy and an adequate examination of such cargo at sea impossible.

Neutral commerce must always inevitably suffer inconvenience from the exercise of belligerent rights in time of war. If these rights are to be retained, they must be capable of effective use and adaptable to modern conditions, for as Lord Stowell truly remarked, "If you are not at liberty to ascertain by sufficient enquiry whether there is property that can be legally captured, it is impossible to capture," and diversion into port or other suitable waters for search is not unduly hard upon neutrals if exercised with proper safeguards against abuse. In the first place the spot selected for search must not involve an unreasonable deviation of the vessel from her voyage. In the second place, it seems perfectly clear that nothing in international law can justify diversion merely in the hope of discovering by subsequent search evidence of contraband or other noxious trading; there must be some substantial ground, no matter from what source it is derived, for suspecting that this particular vessel is engaged in such trade, although the evidence may not at the moment be sufficient to support a plea for condemnation in the prize court. Given these two conditions diversion should be permissible in all cases where the weather makes a visit impossible, or where the visit and such search as is possible at sea does nothing to dispel the suspicions already reasonably deduced from information from external sources. And finally, the neutral owners affected must be able to obtain damages from the belligerent for losses arising from unreasonable diversion or from

unreasonable delay in carrying out the search and in releasing the vessel or cargo or bringing them before the prize court. (Law of Naval Warfare, 2d ed., p. 266.)

Visit and search before 1915.—While from the development of law of maritime warfare visit and search has been approved, the general rule had been that reason for seizure should be evident at the place where the merchant vessel was stopped. The preliminary inspection of the ship's papers or other circumstances then known might furnish grounds for suspicion. Leslie Scott and Alexander Shaw presented the British view in 1915:

In short the right of search is a clearly established principle of international law and the points of criticism which have arisen are levelled not against the right of search itself, but against the particular method in which it has sometimes been exercised. The main criticism of Great Britain's present and recent action is that neutral ships have been taken into port to be searched. This is spoken of by some as if it were a new departure. We propose to show in the first place that this method of exercising the right of search is by no means without ample precedent; and then to discuss the modern conditions of commerce and of warfare which have made this particular method of exercising the right imperative, and the means which have been taken to render this method as little onerous as may be to the neutral interests concerned.

I. It is plain that no belligerent can abandon the right of search; it is clear also that it is of the essence of the right that it shall be effective. The principle at stake is the right to make an effective investigation into the character, ownership and destination of cargoes. That principle is unchallenged and remains. No nation will ever, or can ever, abandon it. To do so would be suicidal. At the worst any changes in this respect which are charged against the British Government are changes not of principle but changes of method necessary to preserve the principle.

It is interesting, however, to note that what is spoken of as a new departure by Great Britain—the taking of vessels into port for search—is really a hoary and time-hallowed way of exercising the right. So long ago as 1808 Lord Ellenborough in the case of *Barker* v. *Blakes* (9 East at p. 292) treated the taking of vessels into port as a well recognized and established custom. "The American" the report of his judgment reads "was at liberty to pursue his commerce with France and to be the carrier of goods for French subjects; at the risk indeed of having his voyage intercepted by the goods being seized; or of the vessel itself, on board

which they were being detained or brought into British ports for the purpose of search."

It is not surprising to find that the obvious convenience of search in a port, even in days before it was so necessary as at the present time, led belligerents to adopt this method.

As was pointed out by Sir Edward Grey in his communication of the 10th February to the American Government. "The present conflict is not the first in which this necessity has arisen: as long ago as the Civil War the United States found it necessary to take vessels into the United States ports in order to determine whether the circumstances justified their detention." Sir Edward Grey also pointed out that the same need arose during the Russo-Japanese War and also during the second Balkan War when British vessels were compelled to follow cruisers to some spot where the right of search could be more conveniently carried out, and that this was ultimately acquiesced in by the British Government.

It is clear then that Great Britain has not done anything unprecedented, and a consideration of the conditions of modern commerce and of modern naval warfare makes it clear that the action of Great Britain in taking vessels to port for search is bound, in the nature of things, to be adopted more and more widely in future if the right of search is to be preserved at all. (Great Britain and Neutral Commerce, p. 4.)

It is true that prior to the World War vessels were taken into port for further search when suspicion justified such action but there could not be said to be any right to take a vessel into port for search in absence of suspicion. Indeed in the case of *Barker* v. *Blakes*, to which reference is made, there was no ground for drawing the sweeping generalization in regard to practice of visit and search. The award of the judges constituting the Permanent Court of Arbitration in the case of the *Carthage* shows the existing law in the pre-war period.

The case of the "Carthage," 1912.—The facts of this case as stated by the tribunal were as follows:

The French mail steamer *Carthage* of the Compagnie Générale Transatlantique, in the course of a regular voyage between Marseilles and Tunis, was stopped on January 16, 1912, at 6:30 A. M., in the open sea, 17 miles from the coast of Sardinia, by the torpedo destroyer *Agordat* of the Royal Italian Navy.

The commander of the *Agordat*, having ascertained the presence on board the *Carthage* of an aeroplane belonging to one Duval, a French aviator, and consigned to his address at Tunis, declared to the captain of the *Carthage* that the aeroplane in question was considered by the Italian Government contraband of war.

As the transshipment of the aeroplane could not be made, the captain of the *Carthage* received the order to follow the *Agordat* to Cagliari, where he was detained until January 20. (Wilson, The Hague Arbitration Cases, p. 363.)

France and Italy, differing as to the rights of the parties in the case, agreed to submit the following question to the Permanent Court of Arbitration at The Hague:

1. Were the Italian naval authorities within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer *Carthage?* (Ibid. p. 353.)

The Tribunal in its award stated:

According to the principles universally acknowledged, a belligerent ship of war has, as a general rule and except for special circumstances, the right to stop in the open sea a neutral commercial vessel and to proceed to visit and search it to assure himself whether it is observing the rules of neutrality, especially as to contraband.

On the other hand, the legality of every act going beyond the limits of visit and search depends upon the existence either of contraband trade or of sufficient reasons to believe that there is such. * * *

The information possessed by the Italian authorities was of too general a nature and had too little connection with the aeroplane in question to constitute sufficient juridical reasons to believe in any hostile destination whatever and, consequently, to justify the capture of the vessel which was transporting the aeroplane. (Ibid. p. 365.)

After further statement of arguments, the tribunal declared and pronounced that:

The Italian naval authorities were not within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Carthage."

American-British exchange of notes, 1914–15.—Almost at the beginning of the World War differences arose as

to the method of exercise of the right of visit and search. Many notes were exchanged between belligerents and neutrals. In a note of December 26, 1914, to the American ambassador in London the Secretary of State said:

> The Government of the United States readily admits the full right of a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them *when there is sufficient evidence to justify a belief that contraband articles are in their cargoes;* but His Majesty's Government, judging by their own experience in the past, must realize that this Government can not without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for evidence of contraband, or upon presumptions created by special municipal enactments which are clearly at variance with international law and practice. (9 Special Supplement, A. J. I. L., July, 1915, p. 58.)

The Secretary of State expressed the opinion that observance of accepted law would better serve belligerents and neutrals, and that a continuance of the British practices might "arouse a feeling contrary to that which has so long existed between the American and British peoples."

In replying to this note on January 7, 1915, Sir Edward Grey said:

> It is, however, essential under modern conditions that where there is real ground for suspecting the presence of contraband, the vessels should be brought into port for examination; in no other way can the right of search be exercised, and but for this practice it would have to be completely abandoned. (Ibid. p. 63.)

This note gave an extended argument of the comparative shipments of goods to different countries before and after the war, the implication being that such increase in shipments was strong presumption of belligerent destination. In a further reply of February 10, 1915, the argument was elaborated, and it was stated:

> The opportunities now enjoyed by a belligerent for obtaining supplies through neutral ports are far greater than they were fifty years ago, and the geographical conditions of the present

struggle lend additional assistance to the enemy in carrying out such importation. We are faced with the problem of intercepting such supplies when arranged with all the advantages that flow from elaborate organization and unstinted expenditure. If our belligerent rights are to be maintained, it is of the first importance for us to distinguish between what is really bona fide trade intended for the neutral country concerned and the trade intended for the enemy country. Every effort is made by organizers of this trade to conceal the true destination, and if the innocent neutral trade is to be distinguished from the enemy trade it is essential that His Majesty's Government should be entitled to make, and should make, careful enquiry with regard to the destination of particular shipments of goods even at the risk of some slight delay to the parties interested. If such enquiries were not made, either the exercise of our belligerent rights would have to be abandoned, tending to the prolongation of this war and the increase of the loss and suffering which it is entailing upon the whole world, or else it would be necessary to indulge in indiscriminate captures of neutral goods and their detention throughout all the period of the resulting prize court proceedings. Under the system now adopted it has been found possible to release without delay, and consequently without appreciable loss to the parties interested, all the goods of which the destination is shown as the result of the enquiries to be innocent.

It may well be that the system of making such enquiries is to a certain extent a new introduction, in that it has been practised to a far greater extent than in previous wars; but if it is correctly described as a new departure, it is a departure which is wholly to the advantage of neutrals, and which has been made for the purpose of relieving them so far as possible from loss and inconvenience. (Ibid. p. 73.)

This note maintained that there were precedents for the British practice in the records of the United States and other states. It also referred to the note of the United States of November 7, 1914, in which it was said:

In the opinion of this Government, the belligerent right of visit and search requires that the search should be made on the high seas at the time of the visit, and that the conclusion of the search should rest upon the evidence found on the ship under investigation and not upon circumstances ascertained from external sources. (Ibid. p. 74.)

The British contention was that this was inconsistent with practice and with the decision of the Supreme Court

of the United States in the case of the *Bermuda*. Nevertheless the British note continues:

> It is not impossible that the course of the present struggle will show the necessity for belligerent action to be taken in various ways which may at first sight be regarded as a departure from old practice. (Ibid. p. 75.)

In further support of the tendencies toward new practices it maintains:

> No Power during these days can afford during a great war to forego the exercise of the right of visit and search. Vessels which are apparently harmless merchantmen can be used for carrying and laying mines and even fitted to discharge torpedoes. Supplies for submarines can without difficulty be concealed under other cargo. The only protection against these risks is to visit and search thoroughly every vessel appearing in the zone of operations, and if the circumstances are such as to render it impossible to carry it out at the spot where the vessel was met with the only practicable course is to take the ship to some more convenient locality for the purpose. To so do is not to be looked upon as a new belligerent right, but as an adaptation of the existing right to the modern conditions of commerce. Like all belligerent rights, it must be exercised with due regard for neutral interests, and it would be unreasonable to expect a neutral vessel to make long deviations from her course for this purpose. It is for this reason that we have done all we can do to encourage neutral merchantmen on their way to ports contiguous to the enemy country to visit some British port lying on their line of route in order that the necessary examination of the ship's papers, and, if required, of the cargo, can be made under conditions of convenience to the ship herself. The alternative would be to keep a vessel which the naval officers desired to board waiting, it might be for days together, until the weather conditions enabled the visit to be carried out at sea. (Ibid. p. 76.)

This note of February 10, 1915, embodies many other statements which might give rise to questions such as:

> The principle that the burden of proof should always be imposed upon the captor has usually been admitted as a theory. In practice, however, it has almost been always otherwise, and any student of the prize courts decisions of the past or even of modern wars will find that goods seldom escape condemnation unless their owner was in a position to prove that their destination was innocent. (Ibid. p. 78.)

War zone proclamation, February 4, 1915.—The German proclamation of February 4, 1915, declaring that as from February 19, in the waters surrounding Great Britain and Ireland every enemy merchant ship "will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account," shifted attention for a time to German practices and the Secretary of State of the United States in a communication to the German Government said:

> It is of course not necessary to remind the German Government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this Government does not understand to be proposed in this case. To declare or exercise a right to attack and destroy any vessel entering a prescribed area of the high seas without first certainly determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare that this Government is reluctant to believe that the Imperial Government of Germany in this case contemplates it as possible. The suspicion that enemy ships are using neutral flags improperly can create no just presumption that all ships traversing a prescribed area are subject to the same suspicion. It is to determine exactly such questions that this Government understands the right of visit and search to have been recognized. (Ibid. p. 86.)

Acts based upon the plea of retaliation in disregard of accepted laws of maritime war followed and arguments varying in weight were presented by all parties. On this situation on March 30, 1915, the Secretary of State writes to the American ambassador at London for transmission to the British Government:

> A belligerent nation has been conceded the right of visit and search, and the right of capture and condemnation, if upon examination a neutral vessel is found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy's government or armed forces. It has been conceded the right to establish and maintain a blockade of an enemy's ports and coasts and to capture and condemn any vessel taken in trying to break the blockade. It is even conceded the right to de-

tain and take to its own ports for judicial examination all vessels which it suspects for substantial reasons to be engaged in unneutral or contraband service and to condemn them if the suspicion is sustained. But such rights, long clearly defined both in doctrine and practice, have hitherto been held to be the only permissible exceptions to the principle of universal equality of sovereignty on the high seas as between belligerents and nations not engaged in war. (Ibid. p. 117.)

Note of Sir Edward Grey, 1915.—In a note of July 31, 1915, Sir Edward Grey quotes with approval the following from Sir Samuel Evans's recent decision in the British prize court in the case of the *Zamora:*

I make bold to express the hope and belief that the nations of the world need not be apprehensive that Orders in Council will emanate from the Government of this country in such violation of the acknowledged laws of nations that it is conceivable that our prize tribunals, holding the law of nations in reverence, would feel called upon to disregard and refuse obedience to the provisions of such orders.

Sir Edward Grey in the same note further says:

In the note which I handed to Your Excellency on the 24d July, I endeavoured to convince the Government of the United States, and I trust with success, that the measures that we have felt ourselves compelled to adopt, in consequence of the numerous acts committed by our enemies in violation of the law of war and the dictates of humanity, are consistent with the principles of international law. (9 Special Supplement, A. J. I. L., July, 1915, p. 164.)

American-British notes, October 21, 1915, April 24, 1916.—The American and British positions in regard to visit and search were most fully set forth in the long notes of October 21, 1915, and April 24, 1916.

In the American note of October 21, 1915, the Secretary of State expresses his regret that the hope based upon assurances of the allied Governments that the measures taken by them would "not infringe unjustifiably upon the neutral right of American citizens engaged in trade and commerce" had not been realized. The Secretary of State then enumerated certain conditions which

aroused his apprehensions of even greater dangers to American rights.

The method of visit and search received particular attention and was quite fully treated in this note. The Secretary of State said:

(3) *First.* The detentions of American vessels and cargoes which have taken place since the opening of hostilities have, it is presumed, been pursuant to the enforcement of the Orders in Council, which were issued on August 20 and October 29, 1914, and March 11, 1915, and relate to contraband traffic and to the interception of trade to and from Germany and Austria-Hungary. In practice these detentions have not been uniformly based on proofs obtained at the time of seizure, but many vessels have been detained while search was made for evidence of the contraband character of cargoes or of an intention to evade the non-intercourse measures of Great Britain. The question, consequently, has been one of evidence to support a belief of—in many cases a bare suspicion of—enemy destination, or occasionally of enemy origin of the goods involved. Whether this evidence should be obtained by search at sea before the vessel or cargo is taken into port, and what the character of the evidence should be, which is necessary to justify the detention, are the points to which I direct Your Excellency's attention.

(4) In regard to search at sea, an examination of the instructions issued to naval commanders of the United States, Great Britain, Russia, Japan, Spain, Germany, and France from 1888 to the beginning of the present war shows that search in port was not contemplated by the Government of any of these countries. On the contrary, the context of the respective instructions show that search at sea was the procedure expected to be followed by the commanders. All of these instructions impress upon the naval officers the necessity of acting with the utmost moderation—and in some cases commanders are specifically instructed—in exercising the right of visit and search, to avoid undue deviation of the vessel from her course.

(5) An examination of the opinions of the most eminent text writers on the laws of nations shows that they give practically no consideration to the question of search in port, outside of examination in the course of regular prize court proceedings.

(6) The assertion by His Majesty's Government that the position of the United States in relation to search at sea is inconsistent with its practice during the American Civil War is based upon a misconception. Irregularities there may have been at the

beginning of that war, but a careful search of the records of this Government as to the practice of its commanders shows conclusively that there were no instances when vessels were brought into port for search prior to instituting prize court proceedings, or that captures were made upon other grounds than, in the words of the American note of November 7, 1914, "evidence found on the ship under investigation and not upon circumstances ascertained from external sources." A copy of the instruction issued to American naval officers on August 18, 1862, for their guidance during the Civil War, is appended.

(7) The British contention that "modern conditions" justify bringing vessels into port for search is based upon the size, the seaworthiness of modern carriers of commerce, and the difficulty of uncovering the real transaction in the intricate trade operations of the present day. It is believed that commercial transactions of the present time, hampered as they are by censorship of telegraph and postal communication on the part of belligerents, are essentially no more complex and disguised than in the wars of recent years, during which the practice of obtaining evidence in port to determine whether a vessel should be held for prize proceedings was not adopted. The effect of the size and seaworthiness of merchant vessels upon their search at sea has been submitted to a board of naval experts, which reports that:

"At no period in history has it been considered necessary to remove every package of a ship's cargo to establish the character and nature of her trade or the service on which she is bound, nor is such removal necessary. * * *

"The facilities for boarding and inspection of modern ships are in fact greater than in former times, and no difference, so far as the necessities of the case are concerned, can be seen between the search of a ship of a thousand tons and one of twenty thousand tons—except possibly a difference in time—for the purpose of establishing fully the character of her cargo and the nature of her service and destination. * * * This method would be a direct aid to the belligerents concerned in that it would release a belligerent vessel overhauling the neutral from its duty of search and set it free for further belligerent operations." (10 Special Supplement, A. J. I. L., Oct. 1916, p. 74.)

The British reply, six months later, April 24, 1916, is so important that it deserves consideration.

4. The question whether the exercise of the right of search can be restricted to search at sea was dealt with in Sir E. Grey's note of the 7th January, 1915, and His Majesty's Government would again draw attention to the facts that information has

constantly reached them of attempts to conceal contraband intended for the enemy in innocent packages, and that these attempts can only be frustrated by examination of the ship and cargo in port. Similarly, in Sir E. Grey's note of the 10th February, 1915, it was pointed out that the size of modern steamships, and their capacity to navigate the waters where the allied patrols have to operate, whatever the conditions of the weather, frequently render it a matter of extreme danger, if not of impossibility, even to board the vessels unless they are taken into calm water for the purpose. It is unnecessary to repeat what was said in that note. There is nothing that His Majesty's Government could withdraw or that the experience of the officers of the allied fleets has tended to show was inaccurate.

5. When visit and search at sea are possible, and when a search can be made there which is sufficient to secure belligerent rights, it may be admitted that it would be an unreasonable hardship on merchant vessels to compel them to come into port, and it may well be believed that maritime nations have hesitated to modify the instructions to their naval officers that it is at sea that these operations should be carried out, and that undue deviation of the vessel from her course must be avoided. That, however, does not affect the fact that it would be impossible, under the conditions of modern warfare to confine the rights of visit and search to an examination of the ship at the place where she is encountered without surrendering a fundamental belligerent right.

6. The effect of the size and seaworthiness of merchant vessels upon their search at sea is essentially a technical question, and accordingly His Majesty's Government have thought it well to submit the report of the board of naval experts, quoted by the United States Ambassador in paragraph 7 of this note, to Admiral Sir John Jellicoe for his observations. The unique experience which this officer has gained as the result of more than 18 months in command of the Grand Fleet renders his opinion of peculiar value. His report is as follows:

"It is undoubtedly the case that the size of modern vessels is one of the factors which renders search at sea far more difficult than in the days of smaller vessels. So far as I know, it has never been contended that it is necessary to remove every package of a ship's cargo to establish the character and nature of her trade, etc.; but it must be obvious that the larger the vessel and the greater the amount of cargo, the more difficult does examination at sea become, because more packages must be removed.

"This difficulty is much enhanced by the practice of concealing contraband in bales of hay and passengers' luggage, casks, etc.,

and this procedure, which has undoubtedly been carried out, necessitates the actual removal of a good deal of cargo for examination in suspected cases. This removal can not be carried out at sea, except in the very finest weather.

"Further, in a large ship the greater bulk of the cargo renders it easier to conceal contraband, especially such valuable metals as nickel, quantities of which can easily be stowed in places other than the holds of a large ship.

"I entirely dispute the contention, therefore, advanced in the American note, that there is no difference between the search of a ship of 1,000 tons and one of 20,000 tons. I am sure that the fallacy of the statement must be apparent to anyone who has ever carried out such a search at sea.

"There are other facts, however, which render it necessary to bring vessels into port for search. The most important is the manner in which those in command of German submarines, in entire disregard of international law and of their own prize regulations, attack and sink merchant vessels on the high seas, neutral as well as British, without visiting the ship and therefore without any examination of the cargo. This procedure renders it unsafe for a neutral vessel which is being examined by officers from a British ship to remain stopped on the high seas, and it is therefore in the interests of the neutrals themselves that the examination should be conducted in port.

"The German practice of misusing United States passports in order to procure a safe conduct for military persons and agents of enemy nationality makes it necessary to examine closely all suspected persons, and to do this effectively necessitates bringing the ship into harbor."

7. Sir John Jellicoe goes on to say:

"The difference between the British and the German procedure is that we have acted in the way which causes the least discomfort to neutrals. Instead of sinking neutral ships engaged in trade with the enemy, as the Germans have done in so many cases in direct contravention of article 113 of their own Naval Prize Regulations, 1909, in which it is laid down that the commander is only justified in destroying a neutral ship which has been captured if—

(*a*) She is liable to condemnation, and

(*b*) The bringing in might expose the warship to danger or imperil the success of the operations in which she is engaged at the time—

we examine them, giving as little inconvenience as modern naval conditions will allow, sending them into port only when this becomes necessary.

"It must be remembered, however, that it is not the allies alone who send a percentage of neutral vessels into port for examination, for it is common knowledge that German naval vessels, as stated in paragraph 19 of the American note, 'seize and bring into German ports neutral vessels bound for Scandinavian and Danish ports.'

"As cases in point, the interception by the Germans of the American oil-tankers *Llama* and *Platuria* in August last may be mentioned. Both were bound to America from Sweden and were taken into Swinemunde for examination."

8. The French Ministry of Marine shares the views expressed by Sir J. Jellicoe on the question of search at sea, and has added the following statement:

"Naval practice, as it formerly existed, consisting in searching ships on the high seas, a method handed down to us by the old navy, is no longer adaptable to the conditions of navigation at the present day. Americans have anticipated its insufficiency and have foreseen the necessity of substituting some more effective method. In the instructions issued by the American Navy Department, under date of June 20, 1898, to the cruisers of the United States, the following order is found (clause 13):

"'If the latter (the ship's appers) show contraband of war, the ship should be seized; if not, she should be set free *unless by reason of strong grounds for suspicion a further search should seem to be requisite.*'

"Every method must be modified having regard to the modifications of material which men have at their disposal, on condition that the method remains humane and civilized.

"The French Admiralty considers that to-day a ship, in order to be searched, should be brought to a port whenever the state of the sea, the nature, weight, volume, and stowage of the suspect cargo, as well as the obscurity and lack of precision of the ship's papers, render search at sea practically impossible or dangerous for the ship searched.

"On the other hand, when the contrary circumstances exist, the search should be made at sea.

"Bringing the ship into port is also necessary and justified when, the neutral vessel having entered the zone or vicinity of hostilities, (1) it is a question, in the interests of the neutral ship herself, of avoiding for the latter a series of stoppages and successive visits and of establishing once for all her innocent character and of permitting her thus to continue her voyage freely and without being molested; and (2) the belligerent, within his rights of legitimate defence, is entitled to exercise special vigilance over unknown ships which circulate in these waters." (Ibid, p. 121.)

Diplomatic correspondence on the "Bernisse" and the "Elve," 1917.—These two small Dutch vessels while being taken into Kirkwall by British authority were torpedoed by German submarines. The Dutch authorities maintained that the vessels' papers were in order and their cargoes innocent. The Dutch minister in London in a communication to the British foreign office inclosing the detailed statement said, October 26, 1917:

3. In these circumstances all responsibility for damage resulting from the detention falls upon the British Government, independently of the cause which occasioned the loss. This responsibility is all the more unquestionable in view of the fact that the British authorities knew beforehand that the detention would bring about not only a loss of time, but obliged the vessels to navigate the danger zone, where they were exposed to attacks by German submarines.

4. In permitting vessels to be taken to British ports without accepting the responsibility therefor in the above sense, the British Government would make it impossible for Dutch vessels to continue to sail to ports of Powers allied to Great Britain.

5. The Queen's Government, going by the above, think that they may expect your Excellency's Government to compensate the shipping company concerned for the losses which they have suffered. (British Parliamentary Papers, Misc. No. 1 [1917–1918], Cd. 8909, p. 2.)

In a reply from the British foreign office, November 16, 1917, there is expressed surprise that the protest and claim has not been made against the German Government rather than against the British Government and it is presumed that this has not been done, and it is said:

The situation, therefore, is that, in the opinion of the Netherlands Government, His Majesty's Government are to be held responsible because, while they were performing the perfectly legitimate act of sending a neutral vessel into port for examination, an act was committed by their enemies for which no justification whatever is possible; and the German Government are apparently to be held blameless. The right of a belligerent to examine and search neutral vessels can not be questioned; the fact that in modern conditions such examination can not take place at sea can not be disputed, and the legality of sending such vessels into port for examination has been admitted in practice

throughout the present war; but the Netherlands Government appear to consider that His Majesty's Government ought to abandon an established right, because their enemies have seen fit to adopt a course of action for which it is not suggested that any justification is to be found.

4. A considerable portion of the enclosures in your note is occupied with an attempt to prove that it was unnecessary, in the particular circumstances of this case, for these vessels to be sent into port. I do not think it necessary to go into this point, because, apart from any question as to the possibility or desirability of discussing the circumstances in which an admitted right might, in the discretion of the officers concerned, be waived, it is clear that had it not been for the utterly unjustifiable action of the German submarines, the sending in of these vessels would have caused no loss to the owners, except the slight delay caused by such diversion and examination. The damage, in fact, suffered was directly caused by the illegal acts of the German submarines; for the consequences of those illegal acts His Majesty's Government could not in any circumstances be responsible.

5. Although it is not disputed that the German action in proclaiming vast tracts of sea to be a "barred zone" in which neutral vessels will be sunk without warning was utterly illegal, to say nothing of its inhumanity, and although His Majesty's Government are of opinion that the neutral Governments affected should have taken such steps as were open to them to resist this German attempt to forbid all navigation within the area in question, they have, in fact, as the Netherlands Government are aware, at some inconvenience to themselves, made arrangements whereby neutral vessels whose owners are prepared to accept certain reasonable conditions may be examined at certain points outside the "danger zone." The vessels now in question had made no attempt to obtain these facilities, but preferred to run such risks as might be incurred, should it be decided that they must be examined in a British port.

6. In these circumstances His Majesty's Government must decline to accept any liability of any sort or kind for loss which may be caused to neutrals by the illegal action of the German Government. I am constrained to say that the action of a neutral nation, which apparently accepts without protest the proceedings of German submarines in such a case as this, and confines its efforts to presenting claims for the loss caused by such action to His Majesty's Government, is, in their opinion, inconsistent with the obligations of neutrality. Indeed, it is not easy to characterise such action by a professedly friendly Power with due regard to the customary amenities of diplomatic correspondence.

I have only to add that if the owners of these two vessels are still of opinion that they have a justifiable claim against His Majesty's Government, it is open to them to present it in the Prize Court; but if such a claim is made, it will be strenuously resisted by the representatives of the Crown.

I have, etc.

A. J. BALFOUR.

(Ibid. p. 11.)

The Dutch minister replied on December 17, 1917, stating that they were unable to recognize the lawfulness of the British action in taking the vessels to Kirkwall, but—

On the contrary, they contest the point of view held by the British Government that a belligerent has the right in any circumstances to bring into port a neutral vessel, and that if they do not avail themselves of this right it is only due to good will on their part. In the opinion of the Netherlands Government, the right of bringing a vessel into port is inadmissible where, as in the case of the vessels *Elve* and *Bernisse*, the ships' papers, as well as the circumstances in which the vessels are sailing, prove distinctly that there is no question of transport of contraband.

The British Government plead that, had it not been for their illegal destruction by the Germans, the fact of bringing the vessels into port—even if it were contrary to law—would not have caused any damage to their owners beyond loss of time. Now, putting aside whatever value this argument might have had in other circumstances, it is clear that it can not be taken into consideration in the present case, seeing that the British warships were aware of the dangers to which the Dutch vessels were exposed by the fact of their being brought through the danger zone. As the British forces compelled them, nevertheless, to cross this zone, the British Government can not, in the opinion of the Netherlands Government, decline responsibility for the damages incurred.

English as well as American prize law admits in a case of illegal capture the responsibility of the captor for any loss sustained from any cause whatever, even that due to *force majeure* or to hazard.

The Queen's Government consider that a belligerent should, *a fortiori*, be held responsible in the case of illegal capture for any loss which they might have foreseen.

The Netherlands Government, for the reasons set forth above, are unable to waive their claim for compensation on behalf of the parties interested in the vessels *Elve* and *Bernisse*. My Government will not refer to the remarks contained in paragraph 6 of

your Excellency's note; they think these passages, as well as the unusual tone of this note, should be attributed to an interpretation which is clearly erroneous from the Netherlands point of view. (Ibid. p. 12.)

The British note of December 31, 1917, acknowledged the Dutch note and reaffirmed the British position indicating that the prize court was open to the claimants.

The considerations advanced in your note have received the attentive consideration of His Majesty's Government, but they do not affect the essential element in the case, which is that the vessels in question, having been respectively sunk and damaged by the admittedly illegal action of German submarines, the Netherlands Government proceed to present a claim to His Majesty's Government and not to the German Government, thus seeking to make His Majesty's Government responsible for the illegal action of their enemies, while taking no steps to obtain compensation from the latter.

3. His Majesty's Government can in the circumstances only repeat that they are unable to entertain any claim of this nature, which it is, however, open to the claimants, as already observed, to make in the Prize Court, should they think fit to do so.

I have, etc.

A. J. Balfour.

(Ibid. p. 14.)

Court decision on the "Bernisse" and the "Elve," 1920.—In this case two small neutral vessels were ordered to proceed to Kirkwall. There were placed on board each vessel a British officer and some men. The counsel for the vessel argued that there was not good ground for sending the vessels in and that though there was no question as to the right to visit and search there was "no right to send the vessels to Kirkwall for examination" and that there must be a cause for suspicion before a vessel can be sent into a port. The counsel for the captor argued that:

It was impossible, having regard to the German submarine peril, to examine any vessel, however small, at sea, and the naval authorities were bound to send all vessels into port for search. (1923 N. W. C. Int. Law Decisions, p. 123.)

and that the sending in was merely a prolongation of the right of visit and search. The president of the court did not rest his decision on this ground but said that:

It is therefore necessary to consider whether there was any reasonable cause for putting the vessels in charge of a British officer and crew, and taking them into Kirkwall. In my opinion this depends upon the question whether in the circumstances the absence of what is called a green clearance formed such a justification. Wider questions were argued during the case involving the whole question of the rights of a belligerent to send a vessel into port for examination instead of examining her at sea, as was the practice in former times. I do not think this case raises that question, for I am satisfied upon the evidence that the officer who stopped the vessels was satisfied that there was nothing connected with the papers, or the cargoes of the vessels, which required further search to be made, and that no one considered that there was any reasonable ground for detaining the vessels any longer, or sending them in for examination, except the absence of the so-called green clearance. ([1920] P. 1; see also 1923 N. W. C. Int. Law Decisions, p. 121.)

After reviewing the evidence in detail, the president said:

I am therefore of opinion that the absence of a green clearance afforded no reasonable ground for sending these vessels to Kirkwall, and as no other reasonable ground was suggested I think there must be a decree of restitution with costs. I do not think there is any ambiguity or difficulty in the terms of the order in council and that it clearly did not apply to this case. (Ibid.)

British procedure, 1914–1918.—There were new methods introduced by belligerents in order to determine the character of neutral trade during the World War. Mr. J. A. Salter, chairman of the allied transport executive, stated:

Immediately on the outbreak of war an Examination Service was established at Kirkwall, the Downs, Port Said and Gibraltar, and the North Sea between the Orkneys and Norway was patrolled. Merchant vessels were brought into port and examined there, for boarding and search at sea were rendered dangerous by submarines, and officers afloat could not be kept adequately informed of the intricate developments in policy. The Examining Officers in the ports acted under direct, and constantly more

stringent, orders from London as to the vessels and cargoes which they were to seize or release. (Allied Shipping Control, J. A. Salter, p. 99.)

Soon even this policy gave way to reprisals and to acts of interference on a scale not contemplated in any rules of maritime warfare. Mr. Salter further said:

The neutral countries were therefore compelled to adopt internal rationing measures, so that the system of official control extended over almost the whole world—neutral and belligerent alike. The actual privations of some of the neutrals were indeed much more serious than those in the Allied countries, no doubt partly because their export prohibitions were not sufficient to prevent supplies slipping across the border under the attraction of very high profits. (Ibid. p. 100.)

Other methods of controlling neutral commerce were adopted.

The first important method by which the economic resources of the Allies were used to supplement mere chartering was to attach conditions to the supply of bunkers from bunker stations.

Great Britain and her Allies controlled the main sources of supply of bunker coal in Europe and the Middle East, and the main bunker deposits on most of the great trade routes of the world. This provided a most effective instrument by which to induce neutral owners to allot their tonnage to work that was in the interests of the Allies, as the following short statement of the world's sources of supply and the principal coaling depots will show.

A. *Europe.* The British Isles represented practically the only source of supply during the war, the amount of Westphalian coal finding its way whether from Germany or Rotterdam being negligible.

B. *Africa and Australasia.* Durban, South Australia, New Zealand, Newcastle (N. S. W.), and Freemantle.

D. *India.* Calcutta.

E. *Far East.* North China and Japan. (Ibid. p. 104.)

Résumé.—Early regulations, legislation, and cases relating to seizing and bringing vessels to port implied that merchant vessels were to be under escort or that a prize crew was to be put on board. The bringing in was upon grounds of suspicion existing at the time of

the visit in hope that evidence to justify suspicion might subsequently be discovered in port. As J. A. Hall said:

> it seems perfectly clear that nothing in international law can justify diversion merely in the hope of discovering by subsequent search evidence of contraband or other noxious trading. (The Law of Naval Warfare, 2d. ed., 1921, p. 267.)

This position seems to be taken by the tribunal of the Permanent Court of Arbitration in the case of the *Carthage*.

The exchange of notes between belligerent and neutral powers and some of the decisions of prize courts during the World War, 1914–1918, show attempts in the time of war to give new interpretations to accepted principles. Many contentions aimed to extend to the doctrine of visit and search the right of a belligerent to interfere with a neutral. The extension of the practice of interference with neutral commerce was supported by some of the belligerents on the ground of the exceptional nature of the war, the geographical relations of the belligerents, the new methods of warfare, and other reasons. The United States in the note of October 21, 1915, reaffirms the statement in the American note of November 17, 1914, objecting to the bringing in of vessels except on "evidence found on the ship under investigation and not upon circumstances ascertained from external sources."

When reprisals were resorted to by the belligerents, the rights of neutrals and their protests against unlawful acts received scant attention. The belligerents prescribed or attempted to prescribe entirely new and very burdensome rules for the conduct of commerce by neutrals and in some instances practically put an end for the time to such commerce. Neutral commerce was instructed to pursue certain defined routes. The supply of bunkers was conditioned on certain pledges as to conduct. Goods were subjected to new inquiries and other restrictions were established. It was predicted that in the next war there would be no neutrals.

Vessels were routed or required to call at certain ports for inspection. This requirement was often stated, with an argument that it was for the convenience and safety of the neutral merchant vessel. It was pointed out, on the other hand, that if each belligerent should maintain the right to route neutral vessels, such vessels might be instructed to go in opposite directions at the same time and might run the risks imposed whatever they might do. It was not denied that a vessel of war might at its own risk escort a neutral merchant vessel to port if it had ground to suspect the merchant vessel of acts which would make it liable to condemnation, or a prize crew might be put on board under similar conditions for similar purposes. The action of the merchant vessel would then be under control of the belligerent and not merely under instructions of the belligerent. The neutral merchant vessel could plead that it was acting under *force majeure* if the actual belligerent force was present or within range. A simple order from one belligerent even if accompanied by a threat as to consequences if not carried out would not justify obedience in the opinion of the opposing belligerent. If the conditions were otherwise, neutral shipping would be in the impossible position of being under an obligation simultaneously to carry out the orders of two opposing forces for it would not be inconceivable that such orders might be broadcast by radio to all neutral ships from the vessels of war of X and Y.

If there is a right of visit and search, and that is at the present time admitted, there must be conceded the opportunity and conditions making its exercise possible. This would imply the right to take the visited vessel to smooth or safe water, or to escort it to such a place, or to retain the custody of the visited vessel till arrival of a force adequate to exercise visit and search.

The sending of a vessel into port under a prize crew or escort presupposes a suspicion of liability to prize pro-

ceedings based on information in possession of the visiting vessel at the time. Suspicion that all vessels may be found liable is not sufficient ground for indiscriminately sending in of merchant vessels.

SOLUTION

Under existing international law the movements of neutral vessels on the high seas are subject to belligerent direction only when under belligerent control by a prize crew or escorting vessel and the liner has incurred no liability.

Situation III

ARMED MERCHANT VESSELS

States X and Y are at war. Other states are neutral. Some of the merchant vessels of states X and Y are armed and some are unarmed.

State A admits armed merchant vessels to its ports on the same terms as other merchant vessels.

State B excludes all armed merchant vessels from its ports.

State C admits armed merchant vessels to its ports under the same rules as vessels of war and admits unarmed merchant vessels as in the time of peace.

State X protests against the regulations of states A and C.

State Y protests against the regulations of states B and C.

How far are the protests valid?

SOLUTION

Practice and opinion since 1914 afford some support for the position of each neutral and for the protest of each belligerent, but the position of state C seems to be gaining support. The whole situation shows the need of clear determination of the status of armed merchant vessels.

NOTES

General.—During and since the World War the status of armed merchant vessels has been a subject of much difference of opinion. It has been referred to in many diplomatic notes and in proclamations. There were armed merchant vessels in early times. The prevalence of piracy and the use of privateers made arming seem necessary for safety. Slave trading was made piracy by a British act of Parliament in 1825. Smuggling caused

many complications at about this period and earlier. In some remote coasts there was little protection for vessels other than such force as they might themselves muster. The reasons for arming were mainly for self-protection in time of peace and in time of war before privateering was declared abolished in 1856.

Early policy of the United States.—In 1797 President Adams said he entertained no doubt—

> of the policy and propriety of permitting our vessels to employ means of defense while engaged in a lawful foreign commerce. It remains for Congress to prescribe such regulations as will enable our seafaring citizens to defend themselves against violations of the law of nations, and at the same time restrain them from committing acts of hostility against the powers at war.

An act of June 25, 1798 (1 Stat. L. 572), provided that an American merchant vessel "may oppose and defend itself against any search, restraint, or seizure which shall be attempted upon such vessel."

Later legislation provided that:

> The Commander and crew of any merchant vessel of the United States, owned wholly, or in part, by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States. (Act Mar. 3, 1819, 3 Stat. p. 513, temporary act till next session of Congress; made permanent by act Jan. 30, 1823, 3 Stat. p. 721.)

Declaration of Paris, 1856.—The Declaration of Paris, 1856, provided "Privateering is and remains abolished" with the idea that privately armed vessels would no longer be used in war. Subsidized vessels, volunteer fleets, etc., were at first regarded with suspicion but later were generally accepted.

Attitude of United States, late nineteenth century.—After the Declaration of Paris, 1856, the United States was particularly careful to explain that the laws did not forbid arming "solely for the purpose of defense and self-protection." There was, however, much concern lest vessels should be armed in the United States and subsequently engage in filibustering expeditions, and armed vessels were required to give bonds to double their value in order to discourage such activities, showing that arming was not regarded as essential to safety of the vessel. The attitude of other states had been somewhat similar in regard to arming.

Pre-war British attitude.—In his speech upon the naval estimate on Wednesday, March 26, 1913, Mr. Churchill after speaking more particularly of the material of the Navy and of protection against airships said:

> I turn to one aspect of trade protection which requires special reference. It was made clear at the Second Hague Conference that certain of the Great Powers have reserved to themselves the right to convert merchant steamers into cruisers, not merely in national harbours, but if necessary on the high seas. There is now good reason to believe that a considerable number of foreign merchant steamers may be rapidly converted into armed ships by the mounting of guns. The sea-borne trade of the world follows well-marked routes, upon nearly all of which the tonnage of the British Mercantile Marine largely predominates. Our food-carrying liners and vessels carrying raw material following these trade routes would, in certain contingencies, meet foreign vessels armed and equipped in the manner described. If the British ships had no armament, they would be at the mercy of any foreign liners carrying one effective gun and a few rounds of ammunition. It would be obviously absurd to meet the contingency of considerable numbers of foreign armed merchant cruisers on the high seas by building an equal number of cruisers. That would expose this country to an expenditure of money to meet a particular danger altogether disproportionate to the expense caused to any foreign Power in creating that danger. Hostile cruisers, wherever they are found, will be covered and met by British ships of war, but the proper reply to an armed merchantman is another merchantman armed in her own defence.

This is the position to which the Admiralty have felt it necessary to draw the attention of leading shipowners. We have felt justified in pointing out to them the danger to life and property which would be incurred if their vessels were totally incapable of offering any defense to an attack. The shipowners have responded to the Admiralty invitation with cordiality, and substantial progress has been made in the direction of meeting it by preparing as a defensive measure to equip a number of first-class British liners to repel the attack of armed foreign merchant cruisers. Although these vessels have, of course, a wholly different status from that of the regularly commissioned merchant cruisers, such as those we obtain under the Cunard agreement, the Admiralty have felt that the greater part of the cost of the necessary equipment should not fall upon the owners, and we have decided, therefore, to lend the necessary guns, to supply ammunition, and to provide for the training of members of the ship's company to form the guns' crews. The owners on their part are paying the cost of the necessary structural conversion, which is not great. The British Mercantile Marine will, of course, have the protection of the Royal Navy under all possible circumstances, but it is obviously impossible to guarantee individual vessels from attack when they are scattered on their voyages all over the world. No one can pretend to view these measures without regret, or without hoping that the period of retrogression all over the world which has rendered them necessary may be succeeded by days of broader international confidence and agreement than those through which we are now passing. (Parliamentary Debates, Commons [1913], vol. 50, p. 1776.)

On June 10, 1913, Mr. Churchill (First Lord of the Admiralty) said:

The House will perhaps allow me to take the opportunity of clearing up a misconception which appears to be prevalent. Merchant vessels carrying guns may belong to one or other of two totally different classes. The first class is that of armed merchant cruisers which on the outbreak of war would be commissioned under the White Ensign and would then be indistinguishable in status and control from men-of-war. In this class belong the *Mauretania* and *Lusitania*. The second class consists of merchant vessels, which would (unless specially taken up by the Admiralty for any purpose) remain merchant vessels in war, without any change of status, but have been equipped by their owners, with Admiralty assistance, with a defensive

armament in order to exercise their right of beating off attack. (Parliamentary Debates, Commons [1913], vol. 53, p. 1431.)

On June 11, 1913, in reply to a question as to whether merchant ships were "equipped for defense only and not for attack," Mr. Churchill said:

Surely these ships will be quite valueless for the purposes of attacking armed vessels of any kind. What they are serviceable for is to defend themselves against the attack of other vessels of their own standing. (Parliamentary Debates, Commons, 1913, vol. 53, p. 1599.)

Again on March 17, 1914, Mr. Churchill, speaking for the British Government, said of armed merchant ships:

* * * by the end of 1914–15 seventy ships will have been so (two 4.7 guns) armed. They are armed solely for defensive purposes. The guns are mounted in the stern and can only fire on a pursuer. * * * They are not allowed to fight with any ships of war. * * * They are, however, thoroughly capable of self-defense against an enemy's armed merchantman. (Parliamentary Debates, Commons, 1914, vol. 59, 1925.)

Late German attitude.—The counselor of the German Imperial Navy Department, Dr. George Schram, said in 1913:

Self-defense is defined as a defense against any unlawful encroachment upon a legal right. (Das Prisenrecht, p. 308.)

It is doubtful in particular cases in what the criterion of forcible resistance consists, especially whether preparations, e. g.: equipment of the vessel with suitable armament, would entail the legal consequences of resistance. This question must be answered in the negative. Preparations or the mere attempt to escape do not constitute in themselves a forcible defense; they do not encroach upon the legal rights of the belligerent. (Ibid. p. 310.)

Early British notes on armed merchant vessels in World War.—Great Britain declared war against Germany on August 4, 1914. On the same day the British chargé in Washington sent to the Secretary of State a communication in regard to the arming of merchant vessels in neutral waters, and other notes followed.

The British Chargé to the Secretary of State

(No. 252.) BRITISH EMBASSY,
Washington, August 4, 1914.

SIR: In view of the state of war now existing between Great Britain and Germany, I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to make the following communication to you in respect to the arming of any merchant vessels in neutral waters.

As you are aware it is recognized that a neutral Government is bound to use due diligence to prohibit its subjects or citizens from the building and fitting out to order of belligerent vessels intended for warlike purposes and also to prevent the departure of any such vessels from its jurisdiction. The starting point for the universal recognition of this principle was the three rules formulated in Article VI of the Treaty between Great Britain and the United States of America for the amicable settlement of all causes of differences between the two countries, signed at Washington on May 8, 1871. These rules, which His Majesty's Government and the United States Government agreed to observe as between themselves in future, are as follows:

"A neutral Government is bound—

"First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to warlike use.

"Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly. To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The above rules may be said to have acquired the force of generally recognized rules of International Law, and the first of them is reproduced almost textually in Article VIII of The Hague Convention Number 13 of 1907 concerning the Rights and Duties of Neutral Powers in case of Maritime Warfare, the principles of which have been agreed to by practically every maritime State.

It is known, however, that Germany, with whom Great Britain is at war, favours the policy of converting her merchant vessels

into armed ships on the High Seas, and it is probable, therefore, that attempts will be made to equip and despatch merchantmen for such conversion from the ports of the United States.

It is probable that, even if the final completion of the measures to fit out merchantmen to act as cruisers may have to be effected on the High Seas, most of the preliminary arrangements will have been made before the vessels leave port, so that the warlike purpose to which they are to be put after leaving neutral waters must be more or less manifest before their departure.

In calling your attention to the above mentioned "Rules of the Treaty of Washington" and The Hague Convention, I have the honour to state that His Majesty's Government will accordingly hold the United States Government responsible for any damages to British Trade or shipping, or injury to British interests generally, which may be caused by such vessels having been equipped at, or departing from, United States ports.

I have, etc.,

COLVILLE BARCLAY.

(Spec. Sup. Am. Jour. Int. Law, vol. 9, July, 1915, p. 222.)

The British Chargé d'Affaires to the Secretary of State

(No. 259.) BRITISH EMBASSY,
Washington, August 9, 1914.

SIR: With reference to my note No. 252 of the 4th instant, I have the honour to inform you that I have now received instructions from Sir Edward Grey to make a further communication to you in explanation of the position taken by His Majesty's Government in regard to the question of armed merchantmen.

As you are no doubt aware, a certain number of British merchant vessels are armed, but this is a precautionary measure adopted solely for the purpose of defence, which, under existing rules of international law, is the right of all merchant vessels when attacked.

According to British rule, British merchant vessels can not be converted into men-of-war in any foreign port, for the reason that Great Britain does not admit the right of any Power to do this on the High Seas. The duty of a neutral to intern or order the immediate departure of belligerent vessels is limited to actual and potential men-of-war, and in the opinion of His Majesty's Government, there can therefore be no right on the part of neutral Governments to intern British armed merchant vessels, which can not be converted into men-of-war on the

High Seas, nor to require them to land their guns before proceeding to sea.

On the other hand, the German Government have consistently claimed the right of conversion on the High Seas, and His Majesty's Government therefore maintain their claim that vessels which are adapted for conversion and under German rules may be converted into men-of-war on the High Seas should be interned in the absence of binding assurances, the responsibility for which must be assumed by the neutral Government concerned, that they shall not be so converted.

I have, etc.,

COLVILLE BARCLAY.

(Ibid. p. 223.)

THE BRITISH CHARGÉ TO THE SECRETARY OF STATE

BRITISH EMBASSY,
Washington, August 12, 1914.

SIR: With reference to my notes Nos. 252 and 259 of August 4 and August 9, respectively, stating and explaining the position taken up by His Majesty's Government in regard to the question of armed merchantmen, I have the honor to state that I have now been informed by Sir Edward Grey that exactly similar instructions were at the same time issued by him to His Majesty's representatives in practically all neutral countries to address the same communications to the respective Governments to which they were accredited.

COLVILLE BARCLAY.

(Ibid. p. 224.)

Reply of the United States.—The United States in a note of August 19, 1914, reviewed briefly the British notes and showed that France and Russia had upheld the right of conversion on the high seas as well as Austria and Germany, while Great Britain and Belgium had opposed this right at The Hague Conference in 1907. Great Britain had later maintained that there was no rule of international law on the subject. Referring to the last clause of the British note of August 4, 1914, in which the responsibility of the United States was declared, the American note said:

It seems obvious therefore that by neither the terms nor the interpretation of the provisions of the treaties on this point is the

United States bound to assume the attitude of an insurer. Consequently the United States disclaims as a correct statement of its responsibility the assertion in your note that "His Majesty's Government will accordingly hold the United States Government responsible for any damages to British trade or shipping, or injury to British interests generally, which may be caused by such vessels having been equipped at, or departing from, United States ports." (Ibid. p. 228.)

British assurances, 1914.—Sir Cecil Spring-Rice wrote to the Secretary of State, August 25, 1914:

(No. 289.) BRITISH EMBASSY,
Washington, August 25, 1914.

With reference to Mr. Barclay's notes Nos. 252 and 259 of the 4th and 9th of August, respectively, fully explaining the position taken up by His Majesty's Government in regard to the question of armed merchantmen, I have the honour, in view of the fact that a number of British armed merchantmen will now be visiting United States ports, to reiterate that the arming of British merchantmen is solely a precautionary measure adopted for the purpose of defense against attack from hostile craft.

I have at the same time been instructed by His Majesty's Principal Secretary of State for Foreign Affairs to give the United States Government the fullest assurances that British merchant vessels will never be used for purposes of attack, that they are merely peaceful traders armed only for defence, that they will never fire unless first fired upon, and that they will never under any circumstances attack any vessel. (Ibid., p. 230.)

To this the State Department replied as follows:

DEPARTMENT OF STATE,
Washington, August 29, 1914.

I have the honor to acknowledge the receipt of your note of the 25th instant in which, referring to previous correspondence, you state that, in view of the fact that a number of British armed merchantmen will now be visiting United States ports, you desire to reiterate that the arming of British merchantmen is solely a precautionary measure adopted for the purpose of defence against attack from hostile craft. You add that you have been instructed by His Majesty's Principal Secretary of State for Foreign Affairs to give the Government of the United States the fullest assurances that British merchant vessels will never be used for purposes of attack, that they are merely peaceful traders armed only for defence, that they will never fire unless first fired upon, and

that they will never under any circumstances attack any vessel. (Ibid. p. 230.)

The *Adriatic*, armed with four guns, and the *Merrion*, armed with six guns, had entered ports of the United States and the American Government foresaw complications in maintaining neutrality and so notified British authorities. The British ambassador states on September 4, 1914:

I have now received a reply from Sir Edward Grey, in which he informs me that His Majesty's Government hold the view that it is not in accordance with neutrality and international law to detain in neutral ports merchant vessels armed with purely defensive armaments. But in view of the fact that the United States Government is detaining armed merchant vessels prepared for offensive warfare, and in order to avoid the difficult questions of the character and degree of armament which would justify detention, His Majesty's Government have made arrangements for landing the guns of the *Merrion*, the *Adriatic* having already sailed before the orders reached her. In the case of the latter ship, the passenger list and cargo had proved that she was proceeding to sea on ordinary commercial business. These and other papers relative to the case will be duly communicated to your Department.

This action has been taken without prejudice to the general principle which His Majesty's Government have enunciated and to which they adhere. (Ibid. p. 231.)

The British position was further set forth in memoranda of September 9, 1914:

A merchant vessel armed purely for self-defence is therefore entitled under international law to enjoy the status of a peaceful trading ship in neutral ports and His Majesty's Government do not ask for better treatment for British merchant ships in this respect than might be accorded to those of other Powers. They consider that only those merchant ships which are intended for use as cruisers should be treated as ships of war and that the questions whether a particular ship carrying an armament is intended for offensive or defensive action must be decided by the simple criterion whether she is engaged in ordinary commerce and embarking cargo and passengers in the ordinary way. If so, there is no rule in international law that would justify such vessel even if armed being treated otherwise than as a peaceful trader.

In urging this view upon the consideration of the United States Government the British Ambassador is instructed to state that it is believed that German merchant vessels with offensive armament have escaped from American ports, especially from ports in South America to prey upon British commerce in spite of all the precautions taken. German cruisers in the Atlantic continue by one means or another to obtain ample supplies of coal shipped to them from neutral ports, and if the United States Government take the view that British merchant vessels which are bona fide engaged in commerce and carry guns at the stern only are not permitted purely defensive armament, unavoidable injury may ensue to British interests and indirectly also to United States trade which will be deplorable. (Ibid. p. 233.)

Memorandum of State Department, September 19, 1914.—The attitude of the Department of State was made known in a memorandum aimed to set forth physical bases for determination of the intent of arming merchant vessels.

THE STATUS OF ARMED MERCHANT VESSELS

A

A merchant vessel of belligerent nationality may carry an armament and ammunition for the sole purpose of defense without acquiring the character of a ship of war.

B

The presence of an armament and ammunition on board a merchant vessel creates a presumption that the armament is for offensive purposes, but the owners or agents may overcome this presumption by evidence showing that the vessel carries armament solely for defense.

C

Evidence necessary to establish the fact that the armament is solely for defense and will not be used offensively, whether the armament be mounted or stowed below, must be presented in each case independently at an official investigation. The result of the investigation must show conclusively that the armament is not intended for, and will not be used in, offensive operations.

Indications that the armament will not be used offensively are:

1. That the caliber of the guns carried does not exceed six inches.

2. That the guns and small arms carried are few in number.

3. That no guns are mounted on the forward part of the vessel.

4. That the quantity of ammunition carried is small.

5. That the vessel is manned by its usual crew, and the officers are the same as those on board before war was declared.

6. That the vessel intends to and actually does clear for a port lying in its usual trade route, or a port indicating its purpose to continue in the same trade in which it was engaged before war was declared.

7. That the vessel takes on board fuel and supplies sufficient only to carry it to its port of destination, or the same quantity substantially which it has been accustomed to take for a voyage before war was declared.

8. That the cargo of the vessel consists of articles of commerce unsuited for the use of a ship of war in operations against an enemy.

9. That the vessel carries passengers who are as a whole unfitted to enter the military or naval service of the belligerent whose flag the vessel flies, or of any of its allies, and particularly if the passenger list included women and children.

10. That the speed of the ship is slow.

D

Port authorities, on the arrival in a port of the United States of an armed vessel of belligerent nationality, claiming to be a merchant vessel, should immediately investigate and report to Washington on the foregoing indications as to the intended use of the armament, in order that it may be determined whether the evidence is sufficient to remove the presumption that the vessel is, and should be treated as, a ship of war. Clearance will not be granted until authorized from Washington, and the master will be so informed upon arrival.

E

The conversion of a merchant vessel into a ship of war is a question of fact which is to be established by direct or circumstantial evidence of intention to use the vessel as a ship of war. (Ibid. p. 234.)

German attitude.—Mr. Gerard transmitted a note from the German foreign office on October 15 which referred to the memorandum of September 19, 1914. This note says:

It is a question whether or not ships thus armed should be admitted into ports of a neutral country at all. Such ships,

in any event, should not receive any better treatment in neutral ports than a regular warship, and should be subject as least to the rules issued by neutral nations restricting the stay of a warship. If the Government of the United States considers that it fulfills its duty as a neutral nation by confining the admission of armed merchant ships to such ships as are equipped for defensive purposes only, it is pointed out that so far as determining the warlike character of a ship is concerned, the distinction between the defensive and offensive is irrelevant. The destination of a ship for use of any kind in war is conclusive, and restrictions as to the extent of armament afford no guarantee that ships armed for defensive purposes only will not be used for offensive purposes under certain circumstances. (Ibid. p. 238.)

On November 7 the United States expressed its dissent from the German point of view, reaffirmed the principles of the memorandum of September 19 and expressed "disapprobation of a practice which compelled it to pass upon a vessel's intended use" and further stated:

As a result of these representations no merchant vessel with armaments have visited the ports of the United States since the 10th of September. In fact from the beginning of the European war but two armed private vessels have entered or cleared from ports of this country and as to these vessels their character as merchant vessels was conclusively established.

Please bring the foregoing to the attention of the German Government and in doing so express the hope that they will also prevent their merchant vessels from entering the ports of the United States carrying armaments even for defensive purposes though they may possess the right to do so by the rules of international law. (Ibid. p. 239.)

Proposals of Department of State, January 18, 1916.— The treatment of armed merchant vessels became a matter of discussion in Congress and elsewhere, and further correspondence. In an informal and confidential letter the Department of State made certain propositions, as follows:

In order to bring submarine warfare within the general rules of international law and the principles of humanity without destroying its efficiency in the destruction of commerce, I believe that a formula may be found which, though it may require slight modifications of the practice generally followed by nations prior

to the employment of submarines, will appeal to the sense of justice and fairness of all the belligerents in the present war.

Your excellency will understand that in seeking a formula or rule of this nature I approach it of necessity from the point of view of a neutral, but I believe that it will be equally efficacious in preserving the lives of all noncombatants on merchant vessels of belligerent nationality.

My comments on this subject are predicated on the following propositions:

1. A noncombatant has a right to traverse the high seas in a merchant vessel entitled to fly a belligerent flag and to rely upon the observance of the rules of international law and principles of humanity if the vessel is approached by a naval vessel of another belligerent.

2. A merchant vessel of enemy nationality should not be attacked without being ordered to stop.

3. An enemy merchant vessel when ordered to do so by a belligerent submarine, should immediately stop.

4. Such vessel should not be attacked after being ordered to stop unless it attempts to flee or to resist, and in case it ceases to flee or resist, the attack should discontinue.

5. In the event that it is impossible to place a prize crew on board of an enemy merchant vessel or convoy it into port, the vessel may be sunk, provided the crew and passengers have been removed to a place of safety.

In complying with the foregoing propositions which, in my opinion, embody the principal rules, the strict observance of which will insure the life of a noncombatant on a merchant vessel which is intercepted by a submarine, I am not unmindful of the obstacles which would be met by undersea craft as commerce destroyers.

Prior to the year 1915 belligerent operations against enemy commerce on the high seas had been conducted with cruisers carrying heavy armaments. Under those conditions international law appeared to permit a merchant vessel to carry an armament for defensive purposes without losing its character as a private commercial vessel. This right seems to have been predicated on the superior defensive strength of ships of war, and the limitation of armament to have been dependent on the fact that it could not be used effectively in offense against enemy naval vessels, while it could defend the merchantmen against the generally inferior armament of piratical ships and privateers.

The use of the submarine, however, has changed these relations. Comparison of the defensive strength of a cruiser and a submarine shows that the latter, relying for protection on its

power to submerge, is almost defenseless in point of construction. Even a merchant ship carrying a small caliber gun would be able to use it effectively for offense against a submarine. Moreover, pirates and sea rovers have been swept from the main trade channels of the seas, and privateering has been abolished. Consequently, the placing of guns on merchantmen at the present day of submarine warfare can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament.

If a submarine is required to stop and search a merchant vessel on the high seas and, in case it is found that she is of enemy character and that conditions necessitate her destruction, to remove to a place of safety all persons on board, it would not seem just or reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.

It would, therefore, appear to be a reasonable and reciprocally just arrangement if it could be agreed by the opposing belligerents that submarines should be caused to adhere strictly to the rules of international law in the matter of stopping and searching merchant vessels, determining their belligerent nationality, and removing the crews and passengers to places of safety before sinking the vessels as prizes of war, and that merchant vessels of belligerent nationality should be prohibited and prevented from carrying any armament whatsoever.

In presenting this formula as a basis for conditional declarations by the belligerent Governments, I do so in the full conviction that your Government will consider primarily the humane purpose of saving the lives of innocent people rather than the insistence upon a doubtful legal right which may be denied on account of new conditions. (Spec. Sup. Am. Jour. Int. Law, vol. 10, Oct. 1916, p. 310.)

Replies.—A German note of February 10, 1916, with its numerous exhibits aimed to support the conclusion that under the circumstances of the existing hostilities "enemy merchantmen armed with guns no longer have any right to be considered as peaceable vessels of commerce."

On March 23, 1916, after consulting the allied Governments the British Government communicated its views on the letter of January 18, 1916, in a memorandum.

This memorandum gave little attention to the propositions of the Secretary of State but enumerated cases in which it was claimed the enemy has disregarded the law. The memorandum did say, however:

Upon perusal of the personal letter addressed under date of January 18th last, by the Honorable Secretary of State of the United States to the Ambassador of England at Washington, the Government of His Britannic Majesty could not but appreciate the lofty sentiments by which Mr. Lansing was inspired on submitting to the countries concerned certain considerations touching the defensive armament of merchant vessels. But the enemy's lack of good faith, evidenced in too many instances to permit of their being regarded as isolated accidents justifies the most serious doubt as to the possibility of putting into practice the suggestions thus formulated.

From a strictly legal standpoint, it must be admitted that the arming of merchant vessels for defense is their acknowledged right. It was established in some countries by long usage, in other countries it was expressly sanctioned by the legislator, such being the case in the United States, in particular.

It being so, it seems obvious that any request that a belligerent forego lawful means of protection from the enemy's unlawful attacks places, upon him, whoever he may be, who formulates the proposition, the duty and responsibility of compelling that enemy to desist from such attacks, for the said enemy would otherwise be encouraged rather to persist in that course. Now the suggestions above referred to do not provide any immediately efficacious sanction. (Spec. Sup. Am. Jour. Int. Law, vol. 10, Oct. 1916, p. 336.)

And later in the same memorandum Great Britain after imputing faithlessness to Germany as well as lawlessness, says:

At the end of his letter, the Honorable Secretary of State hypothetically considered the possibility of eventual decisions under which armed merchant vessels might be treated as auxiliary cruisers.

It is His Britannic Majesty's Government's conviction that the realization of such a hypothesis which would materially modify, to Germany's advantage, the statement of views published in this respect by the American Government on September 19, 1914, can not be given practical consideration by the American authorities.

Such a modification indeed would be inconsistent with the general principles of neutrality as sanctioned in paragraphs 5 and 6

of the preamble to the 13th convention of The Hague concerning maritime neutrality. Moreover the result would be contrary to the stipulations of the 7th convention of The Hague concerning the transformation of merchant vessels into warships. Finally if armed merchant vessels were to be treated as auxiliary cruisers, they would possess the right of making prizes, and this would mean the revival of privateering. (Ibid. p. 337.)

The Secretary of State replied, diplomatically stating that it becomes his duty to accept the reply of the Entente Governments "as final, and in the spirit in which they have made it."

American memorandum, March 25, 1916.—On March 25, 1916, a memorandum prepared by the direction of the President, but unsigned, though issued by the Department of State, was made public as a statement of the "Government's attitude" on the status of armed merchant vessels. This memorandum considered the status of an armed merchant vessel from the point of view of the "neutral when the vessel enters its ports" and from the point of view of "an enemy when the vessel is on the high seas." Among other statements in this memorandum are the following:

(1) It is necessary for a neutral Government to determine the *status* of an armed merchant vessel of belligerent nationality which enters its jurisdiction, in order that the Government may protect itself from responsibility for the destruction of life and property by permitting its ports to be used as bases of hostile operations by belligerent warships.

(2) If the vessel carries a commission or orders issued by a belligerent Government and directing it under penalty to conduct aggressive operations, or if it is conclusively shown to have conducted such operations, it should be regarded and treated as a warship.

(3) If sufficient evidence is wanting, a neutral Government, in order to safeguard itself from liability for failure to preserve its neutrality, may reasonably presume from the facts the *status* of an armed merchant vessel which frequents its waters. There is no settled rule of international law as to the sufficiency of evidence to establish such presumption. As a result a Government must decide for itself the sufficiency of the evidence which it requires to determine the character of the vessel. For the guid-

ance of its port officers and other officials a neutral Government may therefore declare a standard of evidence, but such standard may be changed on account of the general conditions of naval war fare or modified on account of the circumstances of a particular case. These changes and modifications may be made at any time during the progress of the war, since the determination of the *status* of an armed merchant vessel in neutral waters may affect the liability of a neutral Government. * * *

The status of an armed merchant vessel as a warship in neutral waters may be determined, in the absence of documentary proof or conclusive evidence of previous aggressive conduct, by presumption derived from all the circumstances of the case. * * *

(1) It appears to be the established rule of international law that warships of a belligerent may enter neutral ports and accept limited hospitality there upon condition that they leave, as a rule, within 24 hours after their arrival.

(2) Belligerent warships are also entitled to take on fuel once in three months in ports of a neutral country.

(3) As a mode of enforcing these rules a neutral has the right to cause belligerent warships failing to comply with them, together, with their officers and crews, to be interned during the remainder of the war.

(4) Merchantmen of belligerent nationality, armed only for purposes of protection against the enemy, are entitled to enter and leave neutral ports without hindrance in the course of legitimate trade.

(5) Armed merchantmen of belligerent nationality under a commission or orders of their Government to use, under penalty, their armament for aggressive purposes, or merchantmen which, without such commission or orders, have used their armaments for aggressive purposes, are not entitled to the same hospitality in neutral ports as peaceable armed merchantmen. (Spec. Sup. Am. Jour. Int. Law, vol. 10, pp. 367, 369.)

The memorandum later refers to the status of armed merchant vessels on the high seas, enumerating various relations. The memorandum states:

(11) A merchantman entitled to exercise the right of self-protection may do so when certain of attack by an enemy warship, otherwise the exercise of the right would be so restricted as to render it ineffectual. There is a distinct difference, however, between the exercise of the right of self-protection and the act of cruising the seas in an armed vessel for the purpose of attacking enemy naval vessels.

(12) In the event that merchant ships of belligerent nationality are armed and under commission or orders to attack in all circumstances certain classes of enemy naval vessels for the purpose of destroying them, and are entitled to receive prize money for such service from their Government or are liable to a penalty for failure to obey the orders given, such merchant ships lose their *status* as peaceable merchant ships and are to a limited extent incorporated in the naval forces of their Government, even though it is not their sole occupation to conduct hostile operations.

(13) A vessel engaged intermittently in commerce and under a commission or orders of its Government imposing a penalty, in pursuing and attacking enemy naval craft, possesses a *status* tainted with a hostile purpose which it can now throw aside or assume at will. It should, therefore, be considered as an armed public vessel and receive the treatment of a warship by an enemy and by neutrals. Any person taking passage on such a vessel can not expect immunity other than that accorded persons who are on board a warship. A private vessel, engaged in seeking enemy naval craft, without such a commission or orders from its Government, stands in a relation to the enemy similar to that of a civilian who fires upon the organized military forces of a belligerent, and is entitled to no more considerate treatment. (Ibid. p. 371.)

This memorandum apparently envisages two classes of armed merchant vessels, namely "peaceable armed merchantmen" and "warlike armed merchantmen." As to evidence as to character an earlier paragraph had said:

(3) A presumption based solely on the presence of an armament on a merchant vessel of an enemy is not a sufficient reason for a belligerent to declare it to be a warship and proceed to attack it without regard to the rights of the persons on board. Conclusive evidence of a purpose to use the armament for aggression is essential. Consequently an armament which a neutral Government, seeking to perform its neutral duties, may presume to be intended for aggression, might in fact on the high seas be used solely for protection. A neutral Government has no opportunity to determine the purpose of an armament on a merchant vessel unless there is evidence in the ship's papers or other proof as to its previous use, so that the Government is justified in substituting an arbitrary rule of presumption in arriving at the *status* of the merchant vessel. On the other hand, a belligerent warship can on the high seas test by actual experience the

purpose of an armament on an enemy merchant vessel, and so determine by direct evidence the *status* of the vessel. (Ibid. p. 368.)

The application of such principles for determining status as those mentioned in paragraph (12) above would prove difficult if not impossible to establish, e. g., "orders to attack in all circumstances" would rarely be given. Some states no longer give prize money and this is not given for destruction of naval vessels.

This memorandum particularly shows the need of some definite and well-prepared statement as to merchant vessels in time of war.

Professor Hyde's opinion on United States memorandum of March 25, 1916.—

Apart from any question respecting the applicability of the foregoing declaration to the special conditions confronting the United States in March, 1916, the author, with greatest deference for the opinion of those responsible for the memorandum, confesses his inability to accept it as a statement of international law for the following reasons:

(*a*) It fails to heed the fact that the immunity of merchant vessels from attack at sight grew out of their impotency to endanger the safety of public armed vessels of an enemy, and that maritime States have never acquiesced in a principle that a merchant vessel so armed as to be capable of destroying a vessel of war of any kind should enjoy immunity from attack at sight, at least when encountering an enemy cruiser of inferior defensive strength.

(*b*) That an armed merchantman may retain its status as a private ship is not decisive of the treatment to which it may be subjected. The potentiality and special adaptability of the vessel to engage in hostile operations fraught with danger to the safety of an enemy vessel of war, rather than the designs or purposes of those in control of the former, however indicative of its character, have been and should be deemed the test of the right of the opposing belligerent to attack it at sight. In view of this fact the lawful presence on board the armed merchantman of neutral persons or property can not give rise to a duty towards the ship not otherwise apparent. Every occupant thereof must be held to assume that the enemy will use every lawful but no unlawful means to subject the vessel to control or destroy it.

(*c*) To test the propriety of an attack at sight by the existence of conclusive proof of the aggressive purpose of the merchantman places an unreasonable burden on a vessel of war of an unprotected type, whether a surface or undersea craft, for no evidence of the requisite purposes of the merchantman may be in fact obtainable until the vessel of war encountering the former becomes itself the object of attack. The mere pursuit of the merchantman, prior to any signal made to it, may cause the vessel to attack the pursuer as soon as it gets within range.

What constitutes, moreover, an act by way of defense must always remain a matter of uncertainty. The possession of substantial armament encourages the possessor to assert or claim that it acts defensively whenever it opens fire. Thus in practice the distinction between the offensive and defensive use of armament disappears, for the armed merchantman is disposed to exercise its power whenever it can safely do so. To presume, therefore, that such a vessel has a "peaceable character," on the supposition that it will not when occasion offers open fire on vulnerable vessels of war of the enemy is to ignore an inference fairly deducible from the conduct of vessels equipped with effective means of committing hostile acts. (2 Hyde, International Law, p. 469.)

British Admiralty opinion, 1916.—On December 21, 1916, Sir Edward Carson, First Lord of the Admiralty, in reply to a question in the House of Commons said:

His Majesty's Government can not admit any distinction between the rights of unarmed merchant ships and those armed for defensive purposes. It is no doubt the aim of the German Government to confuse defensive and offensive action with the object of inducing neutrals to treat defensively armed vessels as if they were men-of-war. Our position is perfectly clear—that a merchant seaman enjoys the immemorial right of defending his vessel against attack or visit or search by the enemy by any means in his power, but that he must not seek out an enemy in order to attack him—that being a function reserved to commissioned men-of-war. So far as I am aware, all neutral Powers, without exception, take the same view, which is clearly indicated in the Prize Regulations of the Germans themselves. I have confined myself to stating the general position; but my hon. Friend may rest assured that the Departments concerned are devoting continuous attention to all question connected with the theory and practice of defensive armament. (Parliamentary Debates, H. C. 5 series, LXXXVIII, p. 1627.)

Netherlands position on armed merchant vessels.—The status of armed merchant vessels in Dutch ports became a subject of much correspondence in 1914 and 1915. In a telegram to the British Legation at The Hague on August 8, 1914, Sir Edward Grey said:

> You should lose no time in explaining to Netherlands Government that British armed merchant vessels are armed solely for purposes of defence, in case they raise any question as to their position. Existing rules of international law grant the right of defence to all merchant vessels when attacked. There can be no right on the part of a neutral Government to order the internment of British-owned merchant vessels, nor to require them before putting to sea to land their guns, because the duty of such neutral Government to order the immediate departure or internment of belligerent vessels is limited to actual and potential warships, and as Great Britain does not admit that any Power has the right to convert merchant vessels into warships on the high seas, British merchant vessels that are in foreign ports cannot be so converted.
>
> As German rules permit German merchant vessels to be converted on the high seas, we maintain our claim to have them interned unless the neutral Government are prepared to assume responsibility for a binding assurance that no such conversion shall take place. (Parliamentary Papers, Misc. No. 14 [1917], p. 1.)

The Dutch proclamation of neutrality had prohibited entrance within Dutch jurisdiction of "warships of a belligerent and vessels of a belligerent assimilated to warships" and in a communication of April 7, 1915, to the British minister, the Netherlands Minister for Foreign Affairs said:

> As far as Dutch territory in Europe is concerned, this rule admits of no exception, except in the case of damage or by reason of stress of weather.

In replying to this Sir Edward Grey communicated a memorandum by Prof. A. Pearce Higgins:

> As there appears to be some doubt as to the legal status of merchant ships which are armed in self-defence, the following statement may be of interest and assistance to shipowners and shipmasters:—
>
> The practice of arming ships in self-defence is a very old one. There are Royal Proclamations from the time of Charles I order-

ing merchant ships to be armed, and to do their utmost to defend themselves against enemy attacks. During the Napoleonic wars the Prize Courts of Great Britain and the United States recognised that a belligerent merchant ship had a perfect right to arm in her own defence (the *Catherine Elizabeth* (British) and the *Nereide* (United States)). The right of a belligerent merchant ship to carry arms and to resist capture is definitely and clearly laid down in both of the cases just cited.

Chief Justice Marshall, of the United States, in the case of the *Nereide*, said: "It is true that on her passage she had a right to defend herself, and defended herself, and might have captured an assailing vessel."

In modern times the right of resistance of merchant vessels is also recognised by the United States Naval War Code, which was published in 1900, by the Italian Code for the Mercantile Marine, 1877, and by the Russian Prize Regulations, 1895.

Writers of weight and authority in Great Britain, the United States, Italy, France, Belgium, and Holland also recognise this right. The late Dr. F. Perels, who was at one time legal adviser to the German Admiralty, quotes with approval article 10 of the United States Naval War Code, which states: "The personnel of merchant vessels of an enemy, who in self-defence and in protection of the vessel placed in their charge resist an attack, are entitled to the status of prisoners of war."

The most recent authoritative pronouncement on this subject comes from the Institute of International Law, a body composed of international lawyers of all nationalities. This learned society, which meets generally once a year in different countries to discuss and make proposals on points of International Law, at its meeting in 1913 at Oxford prepared a Manual of the Laws of Naval Warfare which was adopted with unanimity. Article 12 of this Manual, which is in French, may be translated as follows:

"Privateering is forbidden. Except under the conditions specified in article 5 and the following articles, public and private ships and their crews may not take part in hostilities against the enemy.

"*Both are, however, allowed to employ force to defend themselves against the attack of an enemy ship.*"

The crews of enemy merchant ships have for centuries been liable to be treated as prisoners of war whether they resisted capture or not.

Crews who forcibly resist visit and capture, can not, if they are unsuccessful, claim to be released; they remain prisoners of war.

Defensively armed merchant ships must not assume the offensive against enemy merchant ships. They are armed for defence,

not for attack, but if they are attacked and they are able successfully to repel the attack and even to capture their assailant, such capture is valid; the captured ship is good prize as between the belligerents.

There is some authority, as in the Italian Code and Russian Prize Regulations, for saying that an armed merchant ship has a right to go to the assistance of other national or allied vessels attacked, and assist them in making a capture. But this is by no means such a well-established rule as the rule of self-defence. It will in nearly all cases be much more important for a defensively armed ship to get safely away with her cargo than to go to the assistance of another merchant ship, for in this case the safety of both may be placed in jeopardy.

The position of the passengers on a defensively armed ship, if no resistance is made, is the same as if they were on an unarmed merchant ship. If, however, the armed ship resists, they will, naturally, have to take their chances of injury or death. Unless they take part in the resistance, they are not liable, if the ship is captured, to be taken prisoners, merely because of the fact of resistance having been offered by the ship. (Ibid. p. 3.)

With the memorandum was a pamphlet by Professor Higgins on the same subject. On July 31, 1915, M. Loudon, the Minister for Foreign Affairs, replied:

In his note of the 12th June last Mr. Chilton returned to this subject. [Admission of armed merchant vessels.] He specially called my attention to the rule of international law which permits belligerent merchant vessels to defend themselves against enemy warships, and he was good enough to add to his note a memorandum and a pamphlet in support of his observations.

I have read these documents with much interest. However, there seems to me to be no connection between the above-mentioned rule and the question whether the admission into neutral ports of a certain category of vessels of belligerent nationality is or is not compatible with the observance of a strict neutrality. This latter question lies within the province of the law of neutrality. On the other hand, the rule invoked by Mr. Chilton is part of the law of war.

A belligerent merchant vessel which fights to escape capture or destruction by an enemy warship commits an act the legitimacy of which is indeed unquestionable, but which is none the less an act of war. (Ibid. p. 5.)

The British Government dissented from this view and made an elaborate argument against the Netherlands po-

sition involving statements of certain consequences that might follow. Many notes were exchanged, but the Netherlands maintained the right to exclude armed merchant vessels.

Official statements.—Governments of different States made known their attitude upon armed merchant vessels during the World War, usually by domestic regulations and sometimes in a more formal manner. There was much diversity and indefiniteness in these documents.

The Argentine Republic took action early in the World War, August 16, 1914, forbidding foreign merchant vessels to arm as auxiliary vessels of war and requiring such merchant vessels as were in port to declare within 24 hours if having auxiliary status. These were to be treated as vessels of war.

General Orders No. 133 of the Argentine navy department, August 17, 1914, provided:

(*c*) Foreign merchantmen which without being officially declared as auxiliary cruisers nevertheless carry cannon for their defense shall not make use of them in waters under State control, and the Government reserves to itself in case of their having served as auxiliary cruisers the right to treat them as such when they return to waters under its jurisdiction.

As the legal status of ships of war is not conceded these vessels, any hostile act of theirs in waters under the jurisdiction of the State shall be considered as an act in open violation of the law of the country.

(*d*) The general prefecture of ports shall take note of all foreign merchantmen which may have cannon for defense, either mounted or unmounted, or emplacements for cannon, to the end that they be especially watched.

(*e*) Among the foreign merchantmen armed with cannon there are some that carry their cannon on the stern only, and with a very restricted firing sector; in other words, they are guns which may fire only directly astern. It may well be conceded that the sole object of these guns is the defense of the boat. Other vessels carry them in the bow and on both sides—that is to say, in offensive sectors. Even though the technical requisites for considering these boats as auxiliary cruisers do not appear, it is nevertheless evident that their armament suggests their purpose. Hence supervision in such cases shall be especially rigorous.

(*f*) It is to be borne in mind that by virtue of the provisions of article 31 in the regulations of the port of the capital and of La Plata no boat is to enter them with explosives aboard. Consequently if any merchantmen armed with cannon carry powder on board they are not to be permitted to enter the harbor before disembarking ammunitions.

(*g*) The general prefecture of ports will take necessary measures to prevent the departure of war vessels, auxiliary cruisers, or even armed merchantmen until 24 hours after the departure from the same harbor of any other armed or unarmed merchantman flying the flag of a hostile country.

(*h*) War vessels and auxiliary cruisers flying belligerent colors whose stop in territorial waters is limited to 24 hours shall not cast anchor in them except for reasons of exceptional urgency (caso de fuerza mayor).

Armed merchantmen which it is suspected may be converted into auxiliary cruisers shall be watched with particular care, so that they may not be able to thwart the precautions established for the protection of steamers departing each in the order of its turn by casting anchor with hostile intent within the territorial waters. (1917 N. W. C. Int. Law Docs. p. 23.)

The Chilean rules of August 14, 1914, issued by the Minister of Foreign Relations, provided that:

1. All vessels at anchor in Chilean ports or which navigate in the national territorial waters may be obliged to submit to the inspection of their papers by the Chilean authorities, which may, whenever they deem it necessary, according to the rules which are hereafter specified, proceed anew to the inspection of the vessel, of its passengers, of its cargo, and of its documents. In consequence, the clearance of any vessel can not be authorized, whatever its cargo and whatever its destination, until the ship has presented complete manifests.

2. Permission to depart will be given to no merchant vessel which has altered or tried to alter its *status*, if there is reason to believe that the vessel has intended to transform itself into an auxiliary cruiser or an armed vessel in any degree whatsoever.

The following acts will be considered as furnishing a presumption of change of *status:*

(*a*) To alter the location or position of guns which are on board the vessel at the time of its arrival; to change the color, the rigging, or the equipment of the vessel in a manner to create a presumption that this change has an object relating to military operations;

(*b*) To embark guns, arms, or munitions in the circumstances which indicate adaptation of the vessel to military ends;

(*c*) To refuse to take on board passengers when the vessel possesses suitable accommodation for them;

(*d*) To load abnormal quantities of coal.

3. The maritime authorities should demand of foreign consuls who visé the papers of vessels a declaration in reference to the character of the vessel, stating whether it is a question of a merchant vessel engaged in the transport of merchandise and passengers, or whether it forms a part of the armed forces of the nation to which it belongs. In this latter case the vessel will be warned that it must depart after twenty-four hours and with coal only sufficient for the journey to the nearest port of its nation. (1916 N. W. C. Int. Law Topics, p. 16.)

In publishing these rules the Minister of Foreign Affairs stated "The Government of the United States has issued similar regulations."

A note from the same office on March 15, 1915, involves some further propositions which were due to the British query as to whether auxiliary naval vessels might resume their merchant-vessel status.

The Government of Chile desires to settle the question suggested by the note above indicated according to the attitude of strict neutrality adopted by it since the beginning of the war and also in conformity with the general convenience of the American Continent, since the great European conflict has demonstrated in an evident manner that the international rules should in the future take into consideration the particular conditions of this hemisphere.

Inspired by this idea, the Chilean Government sees no inconvenience in admitting into the ports and jurisdictional waters of Chile and in treating in all respects as merchant vessels, vessels which have been auxiliaries of the fleet of one of the belligerent States, when the said vessels fulfill the following conditions:

1. That the auxiliary vessel has not violated Chilean neutrality;

2. That the reconversion took place in the ports or jurisdictional waters of the country to which the vessel belongs or in the ports of its allies;

3. That this was effective: that is to say, that the vessel neither in its crew nor in its equipment gives evidence that it can be of service to the armed fleet of its country in the capacity of an auxiliary, as it was formerly;

4. That the Government of the country to which the vessel belongs communicates to all interested nations, and in particular to neutrals, the names of auxiliary vessels which have lost this status to resume that of merchant vessels; and

5. That the same Government give its word that the said vessels are not in the future intended for the service of the armed fleet in the capacity of auxiliaries. (Ibid. p. 28.)

Later another communication states:

The Chilean ports will receive merchant vessels armed for defense when the respective Governments previously communicate to us the name of the vessel which travels under these conditions and also the route, roll of crew, list of passengers, and cargo, as well as the management and the armament of the vessel, demonstrating that it is in reality a question of a merchant vessel which is not intended to carry on hostile acts nor to cooperate in the warlike operations of enemy fleets.

If an armed merchant vessel arrives without this previous notice of the Government, it will be considered and treated as suspicious. If, violating their declaration, these vessels engage in operations of war against other merchant vessels without defense they will be forthwith considered and treated as pirates, since the Government of the country under whose flag they fly will have formally declared their exclusively commercial character by not incorporating them into its fleet of war. (Ibid. p. 31.)

Cuba, March 3, 1916, reproduced as a statement of its policy the memorandum issued by the United States September 19, 1914 (ante, p. 83).

There were differences in the regulations issued by other countries. The methods of determining whether an armed merchant vessel was to be treated as a vessel of war or as a merchant vessel also varied at different times in some states. There were also interpretations which led to misunderstandings. Some of these indicated that it was as Mr. Churchill had predicted in 1913, "a period of retrogression."

British explanation, 1917.—That British armed merchant vessels would be liable in ports of the United States under some of the principles set forth in the memorandum of March 25, 1916, is evident from the statements of Sir Edward Carson and Mr. Churchill in 1917.

Mr. Winston Churchill, speaking on February 2, 1917, before the House of Commons, said:

The object of putting guns on a merchant ship is to compel the submarine to submerge. If a merchant ship has no guns, a submarine with a gun is able to destroy it at leisure by gunfire, and we must remember that on the surface submarines go nearly twice as fast as they do under water. Therefore, the effect of putting guns on a merchant ship is to drive the submarine to abandon the use of the gun, to lose its surface speed, and to fall back on the much slower speed under water and the use of the torpedo. The torpedo, compared with the gun, is a weapon of much more limited application. The number of torpedoes which can be constructed in a given time is itself subject to certain limits. Any trained artillerist or naval gunner can hit with a gun, but to make a submerged attack with a torpedo requires a much higher degree of skill and training. One of the things we counted on to check the indefinite development of German submarine expansion was the difficulty of training crews. That difficulty does not manifest itself as long as submarines are free to use the gun, but it will undoubtedly manifest itself when they are driven back on the almost exclusive use of the torpedo, by the fact that the great majority of merchant ships which they meet will be effectively armed, and the result will be, or should be to a certain extent, that a very large proportion of torpedoes will be wasted, because the difficulty of firing at a ship advancing with accuracy is very great, and there is only a very limited arc ahead of a ship from which a torpedo can be discharged with the certainty of getting home. Also the torpedo is easy to dodge, and a shell is impossible to dodge. I thought it was right to explain in a few simple words this matter which is bread and butter to every family in this country. It is of the highest importance that the ships which are being built to replace existing tonnage, what we might call tonnage casualties, should possess a speed superior to the speed of an enemy submarine submerged. (Parliamentary Debates, 5 s., H. C., XC, p. 1380.)

The parliamentary secretary to the Ministry of Shipping Control indicated his assent and Mr. Churchill continued:

I am very glad my hon. Friend assents to that, because it is of the utmost importance that the Admiralty's view on a matter of that kind should be fully realised and adopted by the Department of Shipping Control. Another point, which is of great importance, is that not only should guns be put on the ships, but there should be at least one good gun-layer on each. I dare say

that is becoming the case now, but it was not the case until a short time ago, and many cases have been brought to notice of vessels which carried guns but carried no man really competent to direct the shot to its objective. (Ibid. p. 1381.)

While under the guise of retaliation a belligerent might arm and use its merchant vessels for any purpose it saw fit as regards its enemy, such appeal to the principle of retaliation would give these vessels no special rights in neutral ports.

German war-zone note, January 31, 1917.—After an explanatory statement the German ambassador presented to the United States a memorandum on January 31, 1917, recounting what Germany conceived to be disregard by the Allies of rules of international law and stating that:

Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing after February 1, 1917, in a zone around Great Britain, France, Italy, and in the Eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc. etc. All ships met within that zone will be sunk. (Spec. Sup. Am. Jour. Int. Law, vol. 11, 1917, p. 333.)

Breaking of diplomatic relations, February 3, 1917.—In reply the Secretary of State reviewed the prior action of Germany and the promises which the United States understood had been made in regard to the conduct of submarine warfare and concluded:

In view of this declaration, which withdraws suddenly and without prior intimation the solemn assurances given in the Imperial Government's note of May 4, 1916, this Government has no alternative consistent with the dignity and honor of the United States but to take the course which it explicitly announced in its note of April 18, 1916, it would take in the event that the Imperial Government did not declare and effect an abandonment of the methods of submarine warfare then employed and to which the Imperial Government now purpose again to resort.

The President has, therefore, directed me to announce to Your Excellency that all diplomatic relations between the United States and the German Empire are severed, and that the American ambassador at Berlin will be immediately withdrawn, and in accordance with such announcement to deliver to Your Excellency your passports. (Ibid. p. 337.)

American attitude after breaking diplomatic relations.—On February 3, 1917, the President explained in an address to Congress the reasons for the breaking of diplomatic relations with Germany. Negotiations were continued through the Swiss minister.

A bill was introduced, February 27, 1917, to authorize the President to provide for the arming of American merchant vessels "with defensive arms fore and aft, and also with the necessary ammunition and means of making use of them." On March 12 announcement was made to the diplomatic representatives in Washington that the Government had "determined to place upon all American merchant vessels sailing through the barred areas an armed guard for the protection of the vessels and the lives of the persons on board." (Ibid. p. 345.)

After February 27 the United States also admitted to its ports vessels of the allied belligerents armed fore and aft.

Other neutral problems.—The neutral may find difficulty in determining many questions if armed merchant vessels are to be allowed. Such means of determination as were accepted in the World War are without general sanction. How far might a neutral without liability allow an armed merchant vessel under the merchant flag of a belligerent state to take on war supplies, make repairs, etc., when that state advocates conversion and reconversion on the high seas without limitation?

Article XIV of the treaty limiting naval armament, February 6, 1922, is as follows:

> No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6 inch (152 millimetres) calibre.

There might be under terms of this situation vessels adapted in accordance with Article XIV. Article XIV has been thought by some to be a tacit sanction for the arming of merchant vessels, but it should be observed that this article provides in time of peace for strengthen-

ing decks "for the purpose of converting such ships into vessels of war" and that no other preparations for this purpose shall be made. It is apparently assumed that in time of war merchant vessels will be converted and that in time of peace decks will be stiffened for that purpose.

If in time of peace a merchant vessel has had its decks stiffened and after the outbreak of war carries guns not exceeding 6-inch caliber, can it claim to be a merchant vessel armed only for defense or would any armament on such a vessel put it in the class of a war vessel? May it be maintained that the stiffening of decks was not for the purpose of conversion into vessels of war but for installing guns for defense?

The wording of Article XIV does not necessarily preclude such an interpretation as the latter, and the French translation, which is equally official, would possibly permit such an interpretation.

The opposing belligerent might, however, maintain that deck strengthening in time of peace was for the purpose of converting the vessel into a vessel of war, and that therefore the mounting of a gun of any caliber on such a vessel was a fulfillment of the purpose making the vessel a vessel of war so far as belligerent relations were concerned. A neutral might maintain the same position.

Probably the very vessels which might have had deck strengthening would be the vessels which, remaining in the merchant service, would arm for defense, and if thus armed would, under the belligerent enemy's interpretation, become liable as vessels of war. The argument would be briefly that strengthening decks is to prepare for conversion into a vessel of war. Putting guns on board is evidence of conversion; therefore a vessel having guns on decks stiffened in time of peace is a vessel of war. The belligerent can not take the chance of being sunk while making an investigation to find out whether such a vessel has been legally converted into a vessel of war in a home port in accord with the rules of a Hague convention.

The granting of subsidies and special franchises, the provisions for taking over into public service in time of war, and other state acts complicate the establishing of a well-defined basis for neutral judgment of the status of merchant vessels in war time. The public ownership of merchant vessels with varying degrees of public control adds further difficulties.

Conclusion.—There have been wide differences of opinion and practice in regard to the treatment of armed merchant vessels.

It can not be said that there is now agreement as to the laws in regard to armed merchant vessels, but under modern conditions the ancient reasons for arming do not exist, as piracy and sea thieving of early days no longer exist. Arming might be to meet a merchant vessel of the enemy similarly armed, as was the British contention just before and in the early part of the World War. Soon, however, it was apparent from documents and practice that an armed merchant vessel's master would use his arms against what he might consider an inferior vessel. For safety of personnel and property, a merchant vessel should remain a peaceful vessel. A vessel of war should likewise conduct itself in accord with the rules of war, and should not be put in peril by vessels whose immunity and right to safety it is under obligation to respect. (Wilson, Handbook of International Law, 2d ed., p. 306.)

Late state practice in owning and operating more or less directly some of the merchant marine under its flag would seem to make some of the early opinions scarcely applicable to present conditions. These and many other reasons point to the desirability both for belligerents and neutrals of a clear determination of the status of armed merchant vessels in the time of war.

SOLUTION

Practice and opinion since 1914 afford some support for the position of each neutral and for the protest of each belligerent, but the position of state C seems to be gaining support. The whole situation shows the need of clear determination of the status of armed merchant vessels.

APPENDICES

1

ARRÊTÉ du Roi des Belges, réglant l'Admission des Bâtiments de Guerre Étrangères dans les Eaux et Ports Belges. Bruxelles, le 18 Février, 1901

Léopold II, Roi des Belges, à tous présents et à venir, Salut.

Considérant qu'il y a lieu de régler, conformément au droit international et aux obligations de la neutralité perpétuelle, l'admission des bâtiments de guerre étrangers dans les eaux et ports du Royaume;

Sur la proposition de nos Ministres des Affaires Étrangères, de la Guerre, et des Chemins de Fer, Postes et Télégraphes,

Nous avons arrêté et arrêtons:

DISPOSITIONS GÉNÉRALES EN TEMPS DE PAIX

ART. 1er. En temps de paix, les bâtiments de guerre appartenant à des Puissances étrangères peuvent entrer librement dans les ports Belges de la Mer du Nord et mouiller devant ces ports dans les eaux territoriales, pourvu que le nombre de ces bâtiments portant le même pavillon, en y comprenant ceux qui se trouveraient déjà dans cete zone ou dans un port, ne soit pas supérieur à trois.

2. Les bâtiments de guerre étrangers ne peuvent entrer dans les eaux Belges de l'Escaut, mouiller en rade d'Anvers ou pénétrer dans les eaux intérieures du Royaume, sans avoir obtenu l'autorisation du Ministre des Affaires Étrangères.

Cette autorisation sera demandée par l'entremise du sous-inspecteur du pilotage Belge à Flessingue.

3. Les bâtiments de guerre étrangers, à moins d'une autorisation spéciale du Gouvernement, ne peuvent séjourner pendant plus de quinze jours dans les eaux territoriales et ports Belges.

Ils sont tenus de prendre le large dans les six heures, s'ils y sont invités par l'administration de la marine ou les autorités

militaries territoriales, même dans le cas où le terme fixé pour leur séjour ne serait pas expiré.

4. Si des circonstances particulières l'exigent, le Gouvernement se réserve la faculté d'apporter des modifications aux restrictions imposées ci-dessus à l'entrée et au séjour des bâtiments de guerre étrangers dans les ports et eaux Belges.

5. Les dispositions des Articles 1er, 2, et 3 ne s'appliquent pas aux bâtiments de guerre dont l'admission a été autorisée par la voie diplomatique, ni aux navires à bord desquels se trouve soit un Chef d'État, soit un Prince d'une dynastie régnante, soit un Agent Diplomatique accrédité auprès du Roi ou du Gouvernement.

6. Il est interdit aux bâtiments de guerre étrangers, se trouvant dans les eaux Belges, de faire des relevés de terrains et des sondages, ainsi que des exercices de débarquement ou de tir.

Les hommes et l'équipage devront être sans armes lorsqu'ils descendront à terre. Les officiers et sous-officiers pourront porter les armes qui font partie de leur uniforme.

Les embarcations qui circuleront dans les ports et les eaux territoriales ne pourront être armées.

Si des honneurs funèbres doivent être rendus à terre, une exception au section 2 du présent Article pourra être autorisée par le Ministre de la Guerre, sur la demande des autorités militaires territoriales.

7. Les Commandants des bâtiments de guerre étrangers sont tenus d'observer les lois et les règlements concernant la police, la santé publique et les impôts et taxes, à moins d'exceptions établies par des Conventions particulières ou par les usages internationaux.

ADMISSION DES NAVIRES DE GUERRE APPARTENANT À DES NATIONS BELLIGÉRANTES

8. Les bâtiments appartenant à la marine militaire d'un État engagé dans une guerre maritime ne sont admis dans les eaux territoriales et les ports Belges de la Mer du Nord que pour une durée de vingt-quatre heures.

Le même navire ne peut être admis deux fois dans l'espace de trois mois.

9. L'accès des eaux Belges de l'Escaut est interdit, à moins d'autorisation spéciale du Gouvernement, aux bâtiments de guerre appartenant à un État engagé dans une guerre maritime.

Aucun pilote ne peut être fourni à ces bâtiments s'ils ne sont pas pourvus de la dite autorisation.

Si l'autorisation n'a pas été obtenue par la voie diplomatique, elle doit être demandée par l'entremise du sous-inspecteur du

pilotage Belge à Flessingue, qui transmettra la décision au Commandant du navire.

10. Sauf en cas de danger de mer, d'avaries graves, de manque de vivres ou de combustible, l'accès des eaux territoriales et ports Belges de la Mer du Nord est interdit aux bâtiments de guerre convoyant des prises et aux bâtiments armés en course naviguant avec ou sans prises.

11. Si des bâtiments de guerre ou des navires armés en course appartenant à une nation engagée dans une guerre maritime sont contraints de se réfugier dans les eaux ou ports Belges de la Mer du Nord, par suite de danger de mer, d'avaries graves, de manque de vivres ou de combustible, ils reprendront le large aussitôt que le temps le permettra ou bien dans les vingt-quatre heures qui suivront soit l'achèvement des réparations autorisés, soit l'embarquement des provisions dont la necessité aura été démontrée.

12. Le Commandant de tout bâtiment de guerre d'une Puissance belligérante aussitôt après son entrée dans les eaux ou ports Belges de la Mer du Nord sera, à l'intervention de l'administration de la marine, invité à fournir des indications précises concernant le pavillon, le nom, le tonnage, la force des machines, l'équipage du bâtiment, son armement, le port de départ, la destination, ainsi que les autres renseignements nécessaires pour déterminer, le cas échéant, les réparations ou les approvisionnements en vivres et charbon qui pourraient être nécessaires.

13. En aucun cas il ne peut être fourni aux bâtiments de guerre ou aux navires armés en course d'une nation engagée dans une guerre maritime des approvisionnements ou moyens de réparations au delà de la mesure indispensable pour qu'ils puissent atteindre le port le plus rapproché de leur pays ou d'un pays allié au leur pendant la guerre.

Un même navire ne pourra être, sans autorization spéciale, pourvu de charbon une seconde fois que trois mois au moins après un premier chargement dans un port Belge.

14. Les bâtiments spécifiés à l'Article précédent ne peuvent, à l'aide de fournitures prises sur le territoire Belge, augmenter, de quelque manière que ce soit, leur matériel de guerre, ni renforcer leur équipage, ni faire des enrôlements, même parmi leurs nationaux, ni exécuter, sous prétexte de réparation, des travaux susceptibles d'accroître leur puissance militaire, ni débarquer pour les rapatrier par les voies de terre, des hommes, marins ou soldats se trouvant à bord.

15. Ils doivent s'abstenir de tout acte ayant pour but de faire du lieu d'asile la base d'une opération quelconque contre leurs ennemis, comme aussi de toute investigation sur les ressources, les forces et l'emplacement de leurs ennemis.

16. Ils sont tenus de se conformer aux prescriptions des Articles 6 et 7 du présent Arrêté et d'entretenir des relations pacifiques avec tous les navires, amis ou ennemis, mouillés dans le même port ou dans la même zone territoriale Belge.

17. L'échange, la vente ou la cession gratuite de prises ou de butin de guerre sont interdits dans les eaux et ports Belges.

18. Tout acte d'hostilité est interdit aux bâtiments de guerre étrangers dans les eaux Belges.

19. Si des bâtiments de guerre ou de commerce de deux nations en état de guerre se trouvent en même temps dans un port ou dans les eaux Belges, il y aura un intervalle de vingt-quatre heures au moins fixé par les autorités compétentes entre le départ d'un navire de l'un des belligérants et le départ subséquent d'un navire de l'autre belligérant.

Dans ce cas il pourra être fait exception aux prescriptions de l'Article 8.

La priorité de la demande assure la priorité de la sortie. Toutefois le plus faible des deux bâtiments pourra être autorisé à sortir le premier.

20. Le Gouvernement se réserve la faculté de modifier les dispositions des Articles 8 et suivants du présent Arrêté, en vue de prendre, dans les cas spéciaux et si des circonstances exceptionnelles se présentent, toutes les mesures que la stricte observation de la neutralité rendrait opportunes ou nécessaires.

21. Dans le cas d'une violation des dispositions du présent Arrêté, les autorités locales désignées par le Gouvernement prendront toutes les mesures que les instructions spéciales leur prescrivent, et elles avertiront sans délai le Gouvernement qui introduira auprès des Puissances étrangères les protestations et réclamations nécessaires.

DISPOSITIONS SPÉCIALES EN CAS DE MOBILISATION DE L'ARMÉE

22. Aussitôt que la mobilisation de l'armée est décretée, il est interdit à tous bâtiments de guerre étrangers de mouiller dans les eaux et ports Belges de la Mer du Nord sans autorisation préalable du Gouvernement, sauf les cas de danger de mer, de manque d'approvisionnements ou d'avaries graves.

Aucun pilote ne pourra, hors les cas de force majeure prévus ci-dessus, être fourni aux dits navires s'ils n'ont pas obtenu l'autorisation préalable requise.

En ce qui concerne les eaux Belges de l'Escaut, lorsque l'autorisation d'y pénétrer aura été accordée dans ces circonstances, le sous-inspecteur du pilotage Belge à Flessingue préviendra le Commandant du navire qu'il doit s'arrêter en vue du Fort Frédéric pour communiquer cette autorisation au délégué du

Gouverneur Militaire de la position d'Anvers, qui sera muni des instructions nécessaires.

Le pavillon Belge est hissé sur l'ancien Fort Frédéric en un point visible pour les navires qui approchent.

DISPOSITIONS FINALES

23. Un exemplaire du présent Arrêté sera remis par les autorités maritimes au Commandant de tout bâtiment de guerre ou navire armé en course aussitôt après qu'il aura été autorisé à mouiller dans les eaux Belges.

24. Nos Ministres des Affaires Étrangères, de la Guerre, et des Chemins de Fer, Postes et Télégraphes sont chargés, chacun dans la limite de ses attributions, de l'exécution du présent Arrêté.

Donné à Bruxelles, le 18 février, 1901.

LEOPOLD.

Par le Roi:
P. de FAVEREAU,
Ministre des Affaires Étrangères.
A. COUSEBANT D'ALKEMADE,
Ministre de la Guerre.
J. LIEBAERT,
Ministre des Chemins de Fer, Postes, et Télégraphes.
(94 Brit. and For. State Papers, p. 665.)

II

BELGIAN REGULATIONS RELATIVE TO THE ADMISSION OF FOREIGN WARSHIPS INTO BELGIAN PORTS AND HARBOURS. BRUSSELS, DECEMBER 30, 1923

Albert, Roi des Belges,
À tous, presents et à venir, Salut.

Considérant que les dispositions de l'arrêté royal du 18 février 1901 concernant l'admission des bâtiments de guerre étrangers dans les eaux et ports du Royaume ne répondent plus à la situation actuelle:

Sur la proposition de Nos Ministres des Affaires Étrangères, des Chemins de Fer, Marine, Postes et Télégraphes, et de la Défense Nationale,

Nous avons arrêté et arrêtons:

DISPOSITIONS GÉNÉRALES RELATIVES AU TEMPS DE PAIX

ART. 1er. Le terme "bâtiment de guerre" doit être considéré comme s'appliquant non seulement à tous les bâtiments de guerre

désignés comme tels au sens admis de ce terme, mais également aux navires auxiliaires de toutes sortes.

2. En temps de paix, les bâtiments de guerre appartenant à des Puissances étrangères reconnues par la Belgique peuvent entrer librement dans les ports belges de la Mer du Nord et mouiller dans la partie des eaux territoriales situées à moins de trois milles marins de la côte, pourvu que le nombre de ces bâtiments portant le même pavillon, en y comprenant ceux qui se trouveraient déjà dans cette zone ou dans un port, ne soit pas supérieur à trois.

Sauf dans les cas prévus à l'Article 5, les visites doivent toujours être précédées d'une notification. Cette notification doit être transmise par la voie diplomatique habituelle, de façon à parvenir, si les circonstances le permettent, au moins sept jours avant la date de la visite projetée.

3. Les bâtiments de guerre étrangers ne peuvent entrer dans les eaux belges de l'Escaut, mouiller en rade d'Anvers, ou pénétrer dans les eaux intérieures du Royaume sans avoir obtenu l'autorisation du Ministre des Affaires Étrangères.

Si elle n'a pas été obtenue préalablement par la voie diplomatique, cette autorisation sera demandée par l'entremise du service du pilotage belge des bouches de l'Escaut, qui transmettra la décision au commandant du navire.

4. Les bâtiments de guerre étrangers, à moins d'une autorisation spéciale du Gouvernement, ne peuvent séjourner pendant plus de quinze jours dans les eaux territoriales et ports belges.

Ils sont tenus de prendre le large dans les six heures, s'ils y sont invités par l'administration de la marine, sur des instructions des autorités militaires territoriales, même dans le cas où le terme fixé pour le séjour ne serait pas encore expiré.

Le droit d'assigner des postes de mouillage aux bâtiments de guerre et de les faire changer éventuellement de mouillage est attribué jusqu'à nouvelle disposition ; dans les eaux maritimes, au fonctionnaire délégué par l'administration de la Marine ; dans les eaux intérieures, aux représentants de l'administration des Ponts et Chaussées, et dans les ports, au capitaine du port.

5. La défense de faire entrer ou mouiller librement plus de trois bâtiments de guerre portant le même pavillon dans la zone fixée par l'Article 2, ainsi que les dispositions de l'Article 3 et du § 1er de l'Article 4, ne s'appliquent pas :

(1.) Aux bâtiments de guerre dont l'admission a été autorisée par la voie diplomatique :

(2.) Aux navires à bord desquels se trouve soit un chef d'État, soit un prince d'une dynastie régnante, soit un agent diplomatique accrédité auprès du Roi ou du Gouvernement ;

(3.) Aux bâtiments de guerre qui sont contraints de relâcher pour cause d'avaries, de gros temps ou autres causes de force majeure;

(4.) Aux navires chargés de la surveillance des pêcheries de la Mer du Nord, conformément à la Convention des pêcheries de la Mer du Nord. Ces garde-pêche sont tenus d'exhiber, à l'approche des eaux territoriales, le signe distinctif qui leur a été attribué par la Convention internationale.

6. Les bâtiments de guerre étrangers ne sont pas soumis à l'obligation de prendre un pilote pour naviguer dans les eaux belges, mais ils doivent se conformer à tous autres règlements relatifs au mouillage et à la navigation dans les eaux belges.

Il est interdit aux bâtiments de guerre étrangers se trouvant dans les eaux belges, de faires des relevés de terrains, des sondages, des exercices de débarquement ou de tir, ainsi que de faire, sans autorisation, aucun travail sous-marin exécuté avec ou sans scaphandrier.

Les sous-marins étrangers ne pourront, en aucun cas, s'immerger dans les eaux territoriales ou entrer immergés dans les eaux territoriales.

Les hommes de l'équipage devront être sans armes lorsqu'ils descendront à terre. Les officiers et sous-officiers pourront porter les armes blanches qui font partie de leur uniforme.

Les embarcations qui circuleront dans les ports et les eaux territoriales ne pourront etre armées.

Si les honneurs funèbres doivent être rendus à terre, une exception à l'alinea 4 du présent Article pourra être autorisée par le Ministre de la Défense Nationale, sur la demande des autorités militaires territoriales.

Aucun bâtiment de guerre étranger ne pourra mettre à exécution une sentence de mort dans les eaux territoriales.

7. Les commandants de bâtiments de guerre étrangers sont tenus d'observer les lois et les règlements concernant la police, la santé publique et les impôts et taxes, à moins d'exceptions établies par des conventions particulières ou par des usages internationaux.

8. A leur entrée dans un port, les bâtiments de guerre étrangers seront accostés par un fonctionnaire envoyé par l'administration de la marine, qui présentera à l'officier commandant les salutations du port.

Le fonctionnaire délégué fera connaître au commandant le poste de mouillage qui a été assigné à son navire; il s'informera de l'objet et de la durée présumée de la visite, du nom de l'officier commandant et des renseignements qu'il est d'usage de recueillir dans ces occasions.

Dans le cas où le fonctionnaire chargé de souhaiter la bienvenue au bâtiment de guerre étranger arriverait à bord après que celui-ci aurait pris son mouillage ou se serait amarré, il ferait néanmoins la communication et l'enquête prescrites ; il donnerait également confirmation du poste de mouillage déjà ou en assignerait un autre.

9. Dans le cas où un bâtiment de guerre étranger ne se conformerait pas aux règles edictées par le présent arrêté, l'administration de la marine ou l'autorité militaire locale attirera d'abord l'attention de l'officier commandant sur la contravention commise et l'invitera formellement à observer les règlements.

Si cette dernière démarche échoue l'autorité militaire territoriale pourra inviter le bâtiment de guerre étranger à quitter immédiatement le port ou les eaux territoriales.

DISPOSITIONS DIVERSES

10. Sont abrogées les dispositions contraires au présent arrêté.

11. Les dispositions qui précèdent ne s'appliquent pas en temps de guerre ou de mobilisation, ou lorsque la crainte d'une guerre, le respect de la neutralité, ou toute autre considération dont le Gouvernement belge sera seul juge, l'obligerait d'en suspendre les effets.

12. Nos Ministres des Affaires étrangères, des Chemins de fer, Marine, Postes et Télégraphes et de la Défense Nationale sont chargés, chacun en ce qui le concerne, de l'exécution du présent arrêté.

Donné à Bruxelles, le 30 décembre 1923.

ALBERT.

Le Ministre des Affaires Étrangères,
HENRI JASPAR.
Le Ministre des Chemins de fer,
Marine, Postes et Télégraphes,
XAVIER NEUJEAN.
Le ministre de la Défense Nationale,
P. FORTHOMME.
(118 Brit. and For. State Papers, p. 43.)

III

DANISH REGULATIONS RELATIVE TO THE ADMISSION OF FOREIGN SHIPS OF WAR TO DANISH PORTS AND TERRITORIAL WATERS IN TIME OF PEACE. MAY 11, 1921

ART. 1^er^. Il est permis aux bâtiments de guerre des Puissances étrangères, sans avis préalable, de naviguer ou de mouiller dans les eaux danoises à l'exception des eaux intérieures, de la rade de Copenhague et des eaux fermées (voir les Articles 3, 4 et 5).

2. Il est permis, avec les exceptions mentionnées dans cet Article, aux bâtiments de guerre des Puissances étrangères de mouiller pour un séjour de courte durée sans avis préalable dans les ports danois qui se trouvent immédiatement sur les voies de trafic naturelles passant par le Kattegat, le Sund, le Grand et le Petit Belt, ainsi que dans les ports de l'île de Bornholm.

Un séjour de plus de quarante-huit heures ainsi qu'une visite d'une escadre ou une visite à Fredericia, Nyborg, Korsør ou Elseneur devra être annoncé préalablement par voie diplomatique (voir cependant l'Article 6).

3. Il est permis aux bâtiments de guerre des Puissances étrangères de mouiller ou de naviguer dans les eaux intérieures danoises ou de mouiller dans les ports de la monarchie danoise autres que ceux mentionnés dans l'Article 2, premier alinéa, pourvu qu'un avis préalable ait été donné par voie diplomatique (voir cependant les Articles 4, 5 et 6).

Les eaux intérieures danoises comprennent outre les ports, entrées de ports, rades et baies, les eaux territoriales situées entre et en deça des îles, îlots et récifs que ne sont pas continuellement submergés.

Sont spécialement regardées comme eaux intérieures les eaux suivantes:

Les fiords de la côte orientale du Jutland,

Les eaux au sud de la Fionie avec les entrées suivantes:

La passe entre le Langeland et la Fionie,

La passe entre le Langeland et l'île d'Ærø.

La passe entre l'île d'Ærø et l'île de Lyø,

La passe entre l'île de Lyø et la Fionie,

La passe entre le continent du Jutland méridional et les îles de Brandsø, de Baagø et d'Aarø,

La passe entre le continent du Jutland méridional et une ligne: Halk Hoved—la pointe est de Barsø—Tantoft Nakke.

La partie de la baie de Sønderborg delimitée vers le sud par une ligne tracée de la pointe de Lille Borrishoved à l'emplacement de la balise "Helts Banke," ensuite de ce point à l'emplacement de la balise "Middlegrund S" et de ce dernier point à la pointe près de Sønderby sur le Kegenaes.

La partie des eaux au sud de Egernsund, délimitée vers le sud par une ligne tracée du feu-antérieur de Rinkenaes à la balise de "Egernsund Anduvningsvager" et de là au feu-antérieur de Skodsbøl.

Les fiords de la côte occidentale du Jutland.

Le fiord de Odense.

Les eaux à l'ouest et au nord de la ligne Hasenøre-Samsø Endelave-Bjørnsknude.

Les eaux à l'est de l'île de Seirø.

La partie des eaux territoriales danoises du Kattegat, du Sund, du Grand et du Petit Belt qui forme les voies de trafic naturelles entre la Mer du Nord et la Mer Baltique, n'est pas comprise sous les eaux intérieures (voir cependant l'Article 2).

4. Il est permis aux bâtiments de guerre de Puissances étrangères de naviguer ou de mouiller dans le port et la rade de Copenhague, après autorisation préalable. Un avis préalable par voie diplomatique suffit, s'il ne s'agit que de passer par les passes de "Hollaenderdybet" et de "Drogden" (voir cependant l'Article 6).

La rade de Copenhague est délimitée vers le nord par une ligne tracée du port de Taarbaek à l'emplacement de la bouée lumineuse "Taarbaek Rev" et de ce point à l'emplacement de la bouée lumineuse "Saltholm Nord-Est," du côté de l'est par une ligne tracée de l'emplacement de ladite bouée à l'extrême nord de l'île de Saltholm et de ce point par le littoral ouest de Saltholm jusqu'à l'extrême sud de cette île, vers le sud par une ligne tracée de ce dernier point à l'emplacement du bateau-feu "Drogdesn Fyrskib," ensuite de ce point à l'emplacement de la balise "Aflandshage" (balise rouge à deux balais) et de ce dernier point à la côte de la Séeland dans la direction de ladite balise vers le clocher de Vallensbaek dans l'île de Séeland.

5. Les eaux intérieures danoises ci-dessous nommées sont regardées comme fermées aux bâtiments de guerre des Puissances étrangères, et la permission d'y mouiller et d'y naviguer ne sera donnée qu'aux bâtiments nommés à l'Article 6:

Le Isefjord et son entrée,

Le Limfjord et ses entrées,

Les eaux dites "Smaalandsfarvandet" avec les entrées suivantes:

Agersøsund,

Omøsund,

La passe entre les îles de Omø et de Lolland,

Guldborgsund,

Grønsund,

Bøgestrømmen,

Le Alssund,

Le Alsfjord.

6. Les restrictions des Articles 2, deuxième alinéa, 3 et 4 ne s'appliquent pas:

(a) Aux bâtiments à bord desquels se trouvent des chefs d'État ou leurs représentants officiels ou bien des membres d'une famille régnante, ni aux bâtiments escortant de tels navires;

(b) Aux bâtiments se trouvant en détresse;

(c) Aux bâtiments ayant le contrôle de la pêche en vertu de la Convention du 6 mai 1882, concernant la police de la pêche dans la Mer du Nord, pour ce qui regarde les ports et rades de la côte occidentale du Jutland.

7. Sont abrogées les dispositions confirmées par Sa Majesté le Roi en date des 15 janvier et 30 juin 1913 concernant l'admission en temps de paix aux ports et aux eaux territoriales de la monarchie danoise de bâtiments de guerre appartenant à des Puissances étrangères.

KLAUS BERNTSEN.

(114 Brit. and For. State Papers, p. 721.)

IV

DECREE REGARDING THE USE OF RADIOTELEGRAPHY AND RADIOTELEPHONY BY FOREIGN WARSHIPS WHILST IN THE PORTS AND TERRITORIAL WATERS OF ITALY AND ITALIAN COLONIES. JULY 10, 1924

[Translation]

Victor Emanuel III. By the Grace of God and the Will of the Nation, King of Italy.

In view of the Royal Decree No. 860 of the 28th May, 1922, which prescribed new rules for the grant to foreign warships of permission to anchor in the ports and waters of the kingdom and the colonies;

In view of the Royal Decree No. 899 of the 29th March, 1923, which made certain modifications in the preceding Decree;

Considering the advisability that rules be laid down also for the use of radiotelegraphy and radiotelephony in the ports of the kingdom and the colonies by foreign warships;

Having heard the Superior Naval Council, which has given an opinion favourable in principle;

On the proposal of the Admiralty, in concert with the Ministries of Foreign Affairs, War, the Colonies and Communications;

We have decreed and do decree:—

ART. 1. Foreign warships and the aeromobiles accompanying them must, while in the waters of the fortified places and in the ports of the kingdom and colonies, observe the following regulations for the use of radiotelegraphy and radiotelephony in addition to those prescribed by the Royal Decree No. 860 of the 28th May, 1922, as modified by the Royal Decree No. 899 of the 29th March, 1923.

2. Foreign warships and the aeromobiles accompanying them, while in the waters of maritime fortified places and naval bases of the kingdom and colonies or anchorages in their vicinity re-

ferred to in article 8 of the Royal Decree No. 860 of the 28th May, 1922, as modified by the Royal Decree No. 899 of the 29th March, 1923, must, in order to utilise their radiotelegraphic or radiotelephonic apparatus, obtain from the commander of the place or port the relative permission on previous notification of the system, the wave-length to be employed in transmission and the time of working.

3. Foreign warships and the aeromobiles accompanying them, while in other ports of the kingdom and colonies not adjacent to a maritime fortified place or naval base, must conform to the following rules:

(a) Transmissions on waves of 600 metres are forbidden except for messages for assistance or in answer to the same;

(b) Interference with messages of national radiotelegraphic stations, whether movable or stationary, must be avoided;

(c) Transmissions must be suspended on a request from any naval or port authority or any stationary national radiotelegraphic station.

(d) Prolonged messages with apparatus which do not transmit with a pure continuous wave must be avoided;

(e) If units of the royal navy are in port, their high command must be asked previously.

The present Decree will have effect from the date it bears.

We order, &c., &c., &c.

(120 Brit. and For. State Papers, p. 657.)

V

NORWEGIAN REGULATIONS RELATIVE TO THE ADMISSION OF FOREIGN WARSHIPS TO NORWEGIAN PORTS AND HARBOURS. CHRISTIANIA, FEBRUARY 14, 1922.

NOTE.—These regulations were promulgated by the Royal Order of January 20, 1913 (Vol. CVII, p. 1064) and were modified by the Royal Orders of August 21 and September 11, 1914, and February 14, 1922.

[Translation]

ART. 1. No foreign warships, except those mentioned in article 4, may enter Norwegian military ports or naval stations without having previously obtained permission to do so from His Majesty the King or from such person as he may have authorised to grant such permission.

The types and names of the warships which desire to enter Norwegian military ports or naval stations, and the time and duration of the visit, must be stated in advance.

The duration of the visit must not, without special permission and in extraordinary circumstances, exceed eight days, and not more than three warships of the same nationality will, as a rule, be permitted to visit the same port at the same time.

2. The following sections of the Norwegian coast are at present considered to be military ports or naval stations:

The Christiania Fjord, with the waters within the line formed by Tonsberg Tonde, Faerder Light, Torbjörnskjaer Light, Vikertangen to Asmalö, Askholm to the coast east of Skjebergkilen.

Christiansand Harbour, with the waters within Fredriksholm, Oxö Light, Grönningen Light, Torsö Light.

Bergen Harbour and the entrances thereto within the line formed by Fonnes (eastern side of Lygre Fjord), Hellisö Light, Tekslen (northern side of Kors Fjord), Lysekloster Church.

Trondjhem Fjord, within Smellingen-Grindviktangen (Rishaug).

Vardö Harbour.

3. After previous notice has been given, foreign warships are free to enter other ports and anchorages in the Kingdom provided no regulations to the contrary have been issued in special cases. Not more than three such vessels of the same nationality may, however, stay in the same port, and the duration of the stay must not exceed fourteen days.

Deviations from the regulations contained in this section can only be made in accordance with permission obtained through the diplomatic channel.

4. The following are exempt from the main regulations contained in articles 1 and 3:

(a) Warships carrying the heads of foreign States and escorting vessels.

(b) Warships in evident distress through perils of the sea; these can at any time seek shelter in the ports of the Kingdom.

(c) Warships intended or used for fishery inspection or for hydrographic or other scientific work.

5. In every Norwegian port where harbour authorities exist, foreign warships are obliged to take up the anchorage berths which may be assigned to them by the harbour authorities (the harbour master).

Permission granted to foreign warships to visit Norwegian ports or anchorages may be withdrawn at any time.

Every foreign warship lying in a Norwegian port or anchorage must at any time—even if it is entitled to lie there in accordance with what is stated above—comply with a request to weigh anchor and leave the port within six hours, or shift berth in accordance with directions received.

6. No person from a foreign warship lying in a Norwegian port or waters may, without special permission, approach or enter any

zone within which there are batteries, fortifications, or other military works, or which is enclosed by the military authorities.

Landing exercises and firing exercises with guns, rifles or torpedoes must not be carried out. The crew must be unarmed when on shore, but officers, petty officers and cadets may bear the arms belonging to their respective uniforms.

7. No person belonging to a foreign warship may make, multiply or publish plans or sketches of the ports and waters of the kingdom, or take measurements or soundings other than such as may be considered necessary for safe navigation in the ordinary channels.

Similarly, no person may make, multiply or publish plans, sketches, drawings, photographs, or descriptions of Norwegian fortifications or of establishments, &c., belonging to them (see article 3 of the Military Secrets Law, August 18, 1914).

8. The commander of a foreign warship must comply with the sanitary, customs, pilotage and harbour regulations issued by the local authorities.

9. The above regulations shall remain in force until His Majesty the King orders otherwise.

(116 Br. and For. State Papers, 897.)

VI

Regulations Regarding the Entry and Sojourn of Foreign Ships of War in the Territorial Waters and Ports of the Serb-Croat-Slovene State. Bled, June 20, 1924

Nous, Alexandre I^er^, par la grâce de Dieu et la volonté du peuple, Roi des Serbes, Croates et Slovènes.

Sur la proposition de notre Ministre de la Guerre et de la Marine, prescrivons ce Règlement sur l'accès et le séjour des bâtiments de guerre étrangers dans les eaux territoriales maritimes et les ports de Royaume des Serbes, Croates et Slovènes.

Art. 1^er^. Ce Règlement n'est en vigueur qu'en temps de paix et n'est applicable qu'aux bâtiments de guerre des États non belligérants qui mouillent dans les ports et autres eaux territoriales maritimes du Royaume serbe-croate-slovène.

2. Sont considerés comme bâtiments de guerre, non seulement les unités de combat qui battent pavillon de guerre, mais aussi les autres bâtiments de toute catégorie arborant pavillon de guerre et naviguant au service des États dont ils ont droit de porter le pavillon.

3. En temps normal, les bâtiments de guerre étrangers sont autorisés, en principe, à visiter les ports et les eaux territoriales

maritimes du Royaume serbe-croate-slovène et à y mouiller à une distance moindre de 6 milles de la basse mer, le long du rivage et des îles ; mais sous la réserve que le nombre des bâtiments d'un même Etat qui séjournent en même temps dans les eaux mentionnées du bassin adriatique ne soit pas supérieur à trois.

Toute visite de cette nature doit être notifiée par la voie diplomatique habituelle de manière à ce que l'annonce de la visite projetée parvienne au Gouvernement royal, autant que possible, au moins sept jours avant la date de l'arrivée.

Le séjour des bâtiments en question dans nos ports et eaux territoriales ne pourra dépasser huit jours. Ces bâtiments sont tenus de prendre le large dans les six heures, si les autorités compétentes l'exigent, que ce délai de huit jours soit ou non écoulé.

4. Les prescriptions de l'Article 3 ne concernent pas :

(a) Les bâtiments de guerre qui ont à leur bord des Souverains, des Chefs d'Etats, des membres de dynasties régnantes et leur suite, des chefs de missions diplomatiques accrédités auprès du Gouvernement royal et autres personnalités se trouvant dans une position analogue ;

(b) Les bâtiments de guerre étrangers qui ont reçu l'autorisation spéciale du Gouvernement royal. Cette autorisation doit être delivrée préalablement par la voie diplomatique, à moins qu'elle ne découle d'accords internationaux ;

(c) Les bâtiments de guerre étrangers qui entrent et séjournent dans les eaux territoriales du Royaume serbe-croate-slovène à la suite d'un naufrage ou d'un cas de force majeure, pour le temps que ces causes subsistent.

5. Lorsqu'un bâtiment de guerre étranger entre dans un port ou accoste sur une rade n'offrant pas une importance militaire maritime spéciale, l'autorité militaire maritime compétente ou l'autorité du port lui assignera un poste de mouillage. Si un bâtiment de guerre étranger mouille avant d'avoir pris contact avec les autorités compétentes et gêne, par sa position au mouillage, la navigation ou les travaux dans le port, l'autorité exigera qu'il change de mouillage et lui donnera les indications nécessaires à cet effet. L'officier (ou fonctionnaire) chargé de la mission ci-dessus mentionnée, après les formalités des prescriptions sanitaires, remettra entre les mains du commandant du bâtiment de guerre étranger un exemplaire du présent Règlement et l'invitera à remplir le questionnaire prescrit pour usage officiel ultérieur.

Dans le cas où les circonstances sanitaires ne permettraient pas d'accorder " libre pratique " au bâtiment de guerre étranger, les dispositions générales du Règlement sur le service dans le port seront appliquées.

6. A l'arrivée ainsi qu'au départ d'un bâtiment de guerre étranger dans un port ou poste de mouillage se trouvant dans une zone d'importance spéciale pour la marine de guerre, le bâtiment est tenu, si les autorités locales l'exigent, de prendre à son bord un officier de conduite ou autre personnage officiel chargé de cette fonction, qui invitera le commandant du bâtiment de guerre étranger à remplir le questionnaire mentionné à l'Article précédent et fournira à ce commandant toutes les instructions relatives à la navigation, au lieu et au mode de mouillage, au départ, ainsi qu'à toutes les conditions requises par les circonstances locales. Le commandant du navire étranger est tenu de se conformer à ces prescriptions. Ce service est gratuit.

Le Gouvernement royal n'assume aucune responsabilité pour les dommages et avaries qui surviendraient éventuellement dans ce cas, à l'arrivée ou au départ du bâtiment.

Le service susdit n'a rien de commun avec le pilotage ordinaire dont l'usage est facultatif pour le navire de guerre, non plus qu'avec le pilotage obligatoire dans les endroits où celui-ci est expressément prescrit.

7. Sont considérées comme zones ayant une importance militaire maritime:

(a) L'île de Krk (Veglia);

(b) Les eaux territoriales dans le canal de Planina (canale Montagna), à l'est du méridien+ 15° 28.0′ de Greenwich, y compris la mer de Novigrad et de Karin, avec les détroits qui en font partie;

(c) Chibénik (Sebenico) et les eaux territoriales à l'intérieur de la ligne Tribugnè (Trebocconi)-Logoroum-Tiat-(cap Tiachtchitsa-cap Marin sur l'île de Zlarin)-Zlarine et Tmara, y compris le port de Grebachtitsa (Sebenico Vecchio);

(d) Boka Kotorska (Bouches de Cattaro) et les eaux territoriales voisines entre la latitude+42° 30.0′ et+42 15.0′.

8. Dans les ports et les endroits où une batterie répond au salut par coups de canon, pour le moment Split (Spalato) et Ertzeg-Novi (Castelnuovo) dans les Bouches de Kotor (Cattaro), ainsi que dans les endroits où stationnent ou viennent des bâtiments de guerre nationaux pouvant rendre les saluts d'artillerie, les bâtiments de guerre étrangers doivent effectuer le salut territorial, s'ils sont aptes, à coups de canon, en se conformant au cérémonial international en usage.

9. Dans le cas où l'intérêt de l'Etat l'exigera, le Gouvernement royal se réserve le droit d'interdire aux bâtiments de guerre étrangers le passage et le séjour en tout endroit compris dans les limites des eaux territoriales du littoral national. Cette interdiction à titre provisoire ou permanent sera notifiée, ainsi que la

zone à laquelle elle sera applicable et tous renseignements pouvant s'y rapporter (par exemple danger des mines). La notification se fera par les avis en usage dans la marine, par les signaux sémaphoriques, ou du bord des bâtiments nationaux. Les signaux seront émis soit d'après le code international des signaux, soit par un autre moyen utile de communication. Si le temps et les circonstances le permettent, la notification de la mesure prohibitive précitée s'effectuera également par la voie diplomatique usuelle.

10. Les bâtiments de guerre étrangers au mouillage dans un port ou dans les eaux territoriales sont tenus de respecter les prescriptions de douane, de police et de santé maritime qui sont en vigueur. De même, ils sont tenus de se conformer à tous les règlements locaux auxquels sont assujettis les bâtiments de la marine nationale. A cet effet, l'autorité locale compétente fournira au commandant étranger toutes les informations nécessaires.

Il n'est pas permis aux bâtiments de guerre étrangers se trouvant à l'intérieur des eaux territoriales de faire des travaux géodésiques et hydrographiques, ni d'effectuer des relevés de terrain et des recherches; mais ils sont autorisés à employer le bathomètre (appareil destiné à sonder les profondeurs) en vue de la navigation. Il leur est également défendu d'effectuer sans autorisation préalable des exercices militaires tels que tirs, lancement de torpilles, mouillage de mines, débarquements de troupes, &c.

En outre, les navires de guerre étrangers ne pourront effectuer aucun travail sous la surface de l'eau sans la permission de l'autorité locale.

Les sous-marins étrangers, dans toutes les eaux territoriales, ne pourront naviguer qu'en surface. Pendant leur séjour dans les ports et les mouillages, ils devront rester en surface et ne pourront effectuer, sans autorisation, aucun exercice de plongée.

Les appareils de navigation aérienne embarqués, escortés ou remorqués par des bâtiments de guerre ou autres bâtiments ne pourront survoler les eaux territoriales.

Il est interdit aux bâtiments de guerre étrangers, sans permission de l'autorité locale compétente, d'envoyer des hommes armés à terre pour y effectuer des exercices, des services de patrouille, de garde, de cérémonial funèbre ou autre, ou dans tout autre dessein.

Les officiers et sous-officiers ne sont autorisés à porter que les armes blanches faisant partie de leur tenue.

Le nombre des hommes autorisés à débarquer ainsi que les heures de la descente à terre et de la rentrée à bord devront

faire l'objet d'un accord préalable entre les autorités du bord et les autorités locales militaires et civiles. A cette occasion, il y aura lieu de tenir compte de la présence éventuelle des bâtiments de guerre d'autres États.

Les embarcations circulant dans les ports et les eaux territoriales ne pourront pas être armées.

Aucune peine capitale ne pourra être mise à exécution dans les eaux territoriales.

11. Dans le cas d'un conflit armé entre d'autres États, conflit où le Royaume serbe-croate-slovène resterait neutre, les règles et les normes générales du droit international maritime ainsi que les Conventions éventuelles prévoyant ce cas seront en vigueur dans les ports du littoral national et les eaux territoriales.

12. Il incombe de veiller à l'accomplissement du présent Règlement aux autorités locales de la marine de guerre ou, à leur défaut, aux autorités civiles du port ou, à défaut de celles-ci, aux autorités de l'armée de terre, ou, enfin, à défaut de ces dernières, aux autorités civiles locales.

13. Les bâtiments de guerre étrangers qui ne se seraient pas conformés aux prescriptions de ce Règlement seront invités officiellement à s'y soumettre. Dans le cas de désobéissance, les autorités compétentes déposeront une protestation formelle entre les mains du commandant de bâtiment de guerre étranger; en même temps, elles aviseront d'urgence par dépeche leurs supérieurs directs et porteront simultanément directement à la connaissance des Ministres des Affaires étrangères, de la Guerre et de la Marine, de l'Intérieur et des Communications l'incident, les motifs de la protestation et la situation créée.

14. Le présent Règlement entrera en vigueur trente jours à compter de sa publication dans le " Journal officiel " due Royaume des Serbes, Croates et Slovènes.

Le 20 juin 1924, à Bled.

ALEXANDRE.

Le Ministre de la Guerre et de la Marine,
aide de camp d'honneur de Sa Majesté le Roi,
général d'armée,

PIERRE PECHITCH.

(120 Brit. and For. State Papers, p. 913.)

VII

Venezuelan Law relative to the Admission of Foreign Ships of War into the Territorial Waters and Ports of Venezuela. Caracas, June 26, 1920

[Translation]

The Congress of the United States of Venezuela decrees:

Art. 1. In times of peace, foreign war vessels, having announced their visit through the diplomatic channel, are allowed to enter into the territorial waters and the seaports of Venezuela open to foreign trade. The number of ships flying the same flag in the territorial waters and ports of the Republic shall not be more than three. For entering into inland waters an authorisation of the Ministry for Foreign Affairs is required.

2. No war vessel shall stay more than fifteen days in Venezuelan territorial waters and ports, except by special authorisation of the Federal Executive, and they must leave within six hours if so demanded by the national authority, even though the period fixed for their stay has not expired.

The Federal Executive can modify the provisions of the two preceding Articles if special circumstances so require.

3. The provisions of Articles 1 and 2 are not applicable in the cases of:—

(1) Foreign warships, the admission of which has been authorised through the diplomatic channel in exceptional conditions.

(2) Ships which, on account of danger, bad weather, or other unforeseen causes have been obliged to take refuge in ports, so long as these conditions last.

(3) Ships carrying Chiefs of State, members of the reigning dynasty, or diplomatic officials, or a mission to the Venezuelan Government.

4. It rests with the harbour-master to point out and change the moorings of foreign warships.

5. Foreign war vessels in ports or territorial waters shall be bound to respect the laws and regulations concerning police, health, finance and harbour. They shall also comply with all the regulations of the port relative to vessels of the national navy.

6. Foreign warships in Venezuelan waters are absolutely prohibited from doing topographical and hydrographical works, from sketching or taking soundings and from performing any submarine work with or without divers; neither can they carry out exercises of landing, target or torpedo practices.

The harbour-master, in agreement with the commander of the ship, shall determine the number of men allowed to land at one time, and the time for landing and returning on board.

7. No death warrant shall be executed in any foreign warship during her stay in territorial waters.

8. No armed member of the crew shall be allowed to land. Officers and ratings are only allowed to carry arms forming a part of their uniform.

9. In cases of funeral honours or other solemnities, the Minister of War and Marine can grant a permit for the landing of an armed detachment accompanying the procession.

10. In the case of any foreign warship not acting in conformity with the rules laid down in this Law, the local naval or military authority shall in the first place draw the attention of the officer commanding to the infringement, and formally demand the observance of the regulations. Should this not lead to any result, he shall report the same to the Minister of War and Marine, who can decide to invite the ship to depart forthwith from the port and territorial waters.

11. On the arrival of one or more warships at a Venezuelan port, an official shall be sent to salute the commander of the foreign naval force. This official shall inform the said commander of the regulations which he is to observe, and ask for the names of the ship or ships, the names of their commanders, an indication of their war material, the name of the port whence they come, the period during which they intend to stay, and the state of health on board.

12. The access of submarines belonging to foreign nonbelligerent Powers to Venezuelan ports or waters is governed by the provisions of this Law. Submarines are allowed to enter into territorial waters only by day, and shall navigate on the surface and fly their national flag.

13. The admission and stay of warships of belligerent nations shall be governed by the provisions contained in the XIIIth Convention of The Hague.

14. In the event of war between two foreign nations, the Federal Executive can prohibit war submarines of the belligerent Powers from entering, navigating or staying in Venezuelan territorial waters and ports, but they may make an exception in the case of submarines obliged to enter into territorial waters on account of damage, state of weather, or with the object of saving human lives. In such cases the submarine shall navigate on the surface, fly the flag of its nationality and the international signal indicating the reason of its entering the territorial waters, which it shall leave as soon as the reasons justifying its entrance have ceased, or when so ordered by the Federal Executive.

15. The Federal Executive shall have the right of limiting and even prohibiting absolutely the admission of foreign warships in case of war or danger of war.

The admission and stay of foreign warships shall be subject to regulations which may be issued as occasion arises.

The provisions of this Law are applicable to auxiliary vessels of the war navy, to armed transports or armed hydroplanes.

The Federal Executive is authorised to promulgate rules concerning the admission of warships in war time.

The Decree of the 11th May, 1832, is hereby repealed.

Given in the Legislative Federal Palace in Caracas the 26th day of June, 1920—year 111 of Independence and 62 of Federation.

[L. S.] D. A. CORONIL,
President.

[L. S.] M. TORO CHIMIES,
Vice-President.

[L. S.] PABLO GODOY FONSECA,
Secretary.

[L. S.] R. CAYAMA MARTINEZ,
Secretary.

Federal Palace, Caracas, June 30, 1920—year 111 of Independence and 62 of Federation.

To be executed and its execution to be seen to.

[L. S.] V. MARQUEZ BUSTILLOS,

[L. S.] E. GIL BORGES,
Minister for Foreign Affairs.

(113 Brit. and For. State Papers, p. 1202.)

INDEX

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